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Federal Register
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Friday, April 30, 2021

Presidential Documents

Title 3—

The President

Proclamation 10188 of April 27, 2021

Workers Memorial Day, 2021

By the President of the United States of America

A Proclamation

America's workers are the backbone of our economy. In every State, territory, and Tribal land, they leave their homes and families and head to work—applying their grit and skill to create, serve, and service all those things that make our world turn. Even during our Nation's most difficult periods, American workers have always persevered, ensuring that our communities remain resilient and that our Nation stands ready to confront the unforeseen challenges of each new generation. Though workers make tremendous sacrifices—especially essential workers who selflessly serve their communities during times of crisis—none of them should have to risk injury, illness, or death in order to provide for themselves and their families. Tragically, thousands of workers are killed and millions more are hurt or fall ill every year in the workplace—incidents that are often preventable. On the 50th anniversary of the Occupational Safety and Health Act of 1970, we reflect on the workers who have tragically lost their lives or have been harmed in the workplace, and we reaffirm our commitment to ensuring that every American worker has a safe and healthy work environment.

Over the past century, labor unions have fought hard—very often successfully—to draw attention to unsafe workplace environments and organize for safer work conditions and protections from the Federal Government. In 1935, the National Labor Relations Act codified private-sector workers' right to organize, collectively bargain, and strike. Decades later, the passage of the Federal Coal Mine Health and Safety Act in 1969 and the Occupational Safety and Health Act in 1970 enshrined a promise that the wanton indifference to workers' lives—the days of the Triangle Shirtwaist Factory fire and the Farmington Mine explosion—would no longer be tolerated. Establishing and enforcing Federal workplace safety and health standards has undoubtedly saved lives.

Despite the progress we have made cementing workplace protections into law, many workers still fear retaliation and retribution from management when they are asked to perform unsafe tasks or work in unsanitary conditions. This fear forces many workers to remain silent, putting their lives and the lives of their colleagues at risk. Alone, a single worker is often at the mercy of their boss, with little chance of rectifying an unsafe working environment created by employers who cut corners in the name of profit. United, and protected by law from intimidation and coercion from their employers, workers can collectively demand improved working conditions.

In an economic system that puts too much power in the hands of wealthy corporations and Wall Street, unions give workers a way to band together, wield their full power, and stand on equal footing with management. Unions not only protect the physical wellbeing of workers, but they also protect their financial security; they protect workers' equity, too, helping ensure that workplaces are free from harassment and discrimination. Over the past half century, we have seen the percentage of American workers represented by unions decline dramatically. It is no surprise that during this same period, the average incomes of the bottom 90 percent of households in America have only risen by about 1 percent. The decades-long assault we've

seen on union organizing is a direct assault on the health and incomes of American workers.

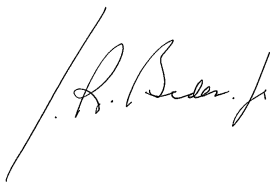
My Administration is committed to protecting the lives, rights, and livelihoods of workers and reducing workplace accidents, injuries, and fatalities. That is why I strongly encourage the Congress to pass the Protecting the Right to Organize (PRO) Act of 2021—and why I included the PRO Act as part of my American Jobs Plan. The decision to form a union should belong to workers alone—free from coercion, interference, or intimidation—and this important legislation would empower workers to exercise their right to organize, hold management accountable for violating the rights of their workers, and promote union elections that are free from interference from employers.

It is clear that we have not completely fulfilled our obligation to protect our Nation's workers. We must always remain vigilant against the notion that worker endangerment is simply a necessary cost of doing business. And we must always protect the right of workers to unite and bargain for their own mutual aid or protection.

Today, we mourn each treasured life taken away on the job. Those stricken by disease and fatal injuries as they keep America running deserve a dedicated day of grateful prayer and remembrance from the living. Workers Memorial Day impels us to work for a future where no one should have to risk their life for a paycheck. When our Nation fully recovers from the challenges we face today, it will be in large part because of the sacrifice and perseverance of our workers. We commit to holding close their memory and investing in the health and safety of the colleagues they have left behind.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 28, 2021, as Workers Memorial Day. I call upon all Americans to observe this day with appropriate service, community, and education programs and ceremonies in memory of those killed or injured due to unsafe working conditions.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of April, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2021–09262
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Presidential Documents

Executive Order 14026 of April 27, 2021

Increasing the Minimum Wage for Federal Contractors

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote economy and efficiency in procurement by contracting with sources that adequately compensate their workers, it is hereby ordered as follows:

Section 1. *Policy.* This order promotes economy and efficiency in Federal procurement by increasing the hourly minimum wage paid by the parties that contract with the Federal Government to $15.00 for those workers working on or in connection with a Federal Government contract as described in section 8 of this order. Raising the minimum wage enhances worker productivity and generates higher-quality work by boosting workers' health, morale, and effort; reducing absenteeism and turnover; and lowering supervisory and training costs. Accordingly, ensuring that Federal contractors pay their workers an hourly wage of at least $15.00 will bolster economy and efficiency in Federal procurement.

Sec. 2. *Increasing the Minimum Wage for Federal Contractors and Subcontractors.* (a) Executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A), (5) (agencies), shall, to the extent permitted by law, ensure that contracts and contract-like instruments (as defined in regulations issued pursuant to section 4(a) of this order and as described in section 8(a) of this order) include a clause that the contractor and any covered subcontractors (as defined in regulations issued pursuant to section 4(a) of this order) shall incorporate into lower-tier subcontracts. This clause shall specify that, as a condition of payment, the minimum wage to be paid to workers employed in the performance of the contract or any covered subcontract thereunder, including workers whose wages are calculated pursuant to special certificates issued under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)), shall be at least:

(i) $15.00 per hour, beginning January 30, 2022; and

(ii) beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor (Secretary). The amount shall be published by the Secretary at least 90 days before such new minimum wage is to take effect and shall be:

(A) not less than the amount in effect on the date of such determination;

(B) increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics; and

(C) rounded to the nearest multiple of $0.05.

(b) In calculating the annual percentage increase in the Consumer Price Index for purposes of subsection (a)(ii)(B) of this section, the Secretary shall compare such Consumer Price Index for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect pursuant to subsection (a)(ii)(B) of this section) with the Consumer Price Index for the same month in the

preceding year, the same quarter in the preceding year, or the preceding year, respectively.

(c) Nothing in this order shall excuse noncompliance with any applicable Federal or State prevailing wage law, or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this order.

Sec. 3. *Application to Tipped Workers.* (a) For workers covered under section 2 of this order who are tipped employees pursuant to section 3(t) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(t)), the cash wage that must be paid by an employer to such workers shall be at least:

(i) $10.50 per hour, beginning January 30, 2022;

(ii) beginning January 1, 2023, 85 percent of the wage in effect under section 2 of this order, rounded to the nearest multiple of $0.05; and

(iii) beginning January 1, 2024, and for each subsequent year, 100 percent of the wage in effect under section 2 of this order.

(b) Where workers do not receive a sufficient additional amount on account of tips, when combined with the hourly cash wage paid by the employer, such that their wages are equal to the minimum wage under section 2 of this order, the cash wage paid by the employer, as set forth in this section for those workers, shall be increased such that their wages equal the minimum wage under section 2 of this order. Consistent with applicable law, if the wage required to be paid under the Service Contract Act, 41 U.S.C. 6701 *et seq.*, or any other applicable law or regulation is higher than the wage required under section 2 of this order, the employer shall pay additional cash wages sufficient to meet the highest wage required to be paid.

Sec. 4. *Regulations and Implementation.* (a) The Secretary shall, consistent with applicable law, issue regulations by November 24, 2021, to implement the requirements of this order. Such regulations shall include both definitions of relevant terms and, as appropriate, exclusions from the requirements of this order. Within 60 days of the Secretary issuing such regulations, the Federal Acquisition Regulatory Council, to the extent permitted by law, shall amend the Federal Acquisition Regulation to provide for inclusion in Federal procurement solicitations, contracts, and contract-like instruments subject to this order the clause described in section 2(a) of this order.

(b) Within 60 days of the Secretary issuing regulations pursuant to subsection (a) of this section, agencies shall take steps, to the extent permitted by law, to exercise any applicable authority to ensure that contracts and contract-like instruments as described in sections 8(a)(i)(C) and (D) of this order, entered into on or after January 30, 2022, consistent with the effective date of such agency action, comply with the requirements set forth in sections 2 and 3 of this order.

(c) Any regulations issued pursuant to this section should, to the extent practicable, incorporate existing definitions, principles, procedures, remedies, and enforcement processes under the Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.*; the Service Contract Act, 41 U.S.C. 6701 *et seq.*; the Davis-Bacon Act, 40 U.S.C. 3141 *et seq.*; Executive Order 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors); and regulations issued to implement that order.

Sec. 5. *Enforcement.* (a) The Secretary shall have the authority for investigating potential violations of and obtaining compliance with this order.

(b) This order creates no rights under the Contract Disputes Act, 41 U.S.C. 7101 *et seq.*, and disputes regarding whether a contractor has paid the wages prescribed by this order, as appropriate and consistent with applicable law, shall be disposed of only as provided by the Secretary in regulations issued pursuant to this order.

Sec. 6. *Revocation of Certain Presidential Actions.* Executive Order 13838 of May 25, 2018 (Exemption From Executive Order 13658 for Recreational Services on Federal Lands), is revoked as of January 30, 2022. Executive

Order 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors), is superseded, as of January 30, 2022, to the extent it is inconsistent with this order.

Sec. 7. *Severability.* If any provision of this order, or the application of any provision of this order to any person or circumstance, is held to be invalid, the remainder of this order and its application to any other person or circumstance shall not be affected thereby.

Sec. 8. *Applicability.* (a) This order shall apply to any new contract; new contract-like instrument; new solicitation; extension or renewal of an existing contract or contract-like instrument; and exercise of an option on an existing contract or contract-like instrument, if (i):

(A) it is a procurement contract or contract-like instrument for services or construction;

(B) it is a contract or contract-like instrument for services covered by the Service Contract Act;

(C) it is a contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 CFR 4.133(b); or

(D) it is a contract or contract-like instrument entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and

(ii) the wages of workers under such contract or contract-like instrument are governed by the Fair Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act.

(b) For contracts or contract-like instruments covered by the Service Contract Act or the Davis-Bacon Act, this order shall apply only to contracts or contract-like instruments at the thresholds specified in those statutes. Where workers' wages are governed by the Fair Labor Standards Act of 1938, this order shall apply only to procurement contracts or contract-like instruments that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to this order pursuant to regulations or actions taken under section 4 of this order.

(c) This order shall not apply to grants; contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93–638), as amended; or any contracts or contract-like instruments expressly excluded by the regulations issued pursuant to section 4(a) of this order.

Sec. 9. *Effective Date.* (a) This order is effective immediately and shall apply to new contracts; new contract-like instruments; new solicitations; extensions or renewals of existing contracts or contract-like instruments; and exercises of options on existing contracts or contract-like instruments, as described in section 8(a) in this order, where the relevant contract or contract-like instrument will be entered into, the relevant contract or contract-like instrument will be extended or renewed, or the relevant option will be exercised, on or after:

(i) January 30, 2022, consistent with the effective date for the action taken by the Federal Acquisition Regulatory Council pursuant to section 4(a) of this order; or

(ii) for contracts where an agency action is taken pursuant to section 4(b) of this order, January 30, 2022, consistent with the effective date for such action.

(b) As an exception to subsection (a) of this section, where agencies have issued a solicitation before the effective date for the relevant action taken pursuant to section 4 of this order and entered into a new contract or contract-like instrument resulting from such solicitation within 60 days of such effective date, such agencies are strongly encouraged but not required to ensure that the minimum wages specified in sections 2 and 3 of this

order are paid in the new contract or contract-like instrument. But if that contract or contract-like instrument is subsequently extended or renewed, or an option is subsequently exercised under that contract or contract-like instrument, the minimum wages specified in sections 2 and 3 of this order shall apply to that extension, renewal, or option.

(c) For all existing contracts and contract-like instruments, solicitations issued between the date of this order and the effective dates set forth in this section, and contracts and contract-like instruments entered into between the date of this order and the effective dates set forth in this section, agencies are strongly encouraged, to the extent permitted by law, to ensure that the hourly wages paid under such contracts or contract-like instruments are consistent with the minimum wages specified in sections 2 and 3 of this order.

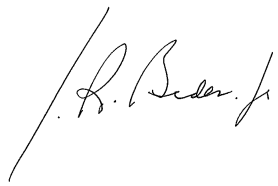
Sec. 10. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
April 27, 2021.

[FR Doc. 2021–09263
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Rules and Regulations

Federal Register
Vol. 86, No. 82
Friday, April 30, 2021

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 457

[Docket ID FCIC–21–0001]

RIN 0563–AC71

Northern Potato Crop Insurance—Quality Endorsement; Northern Potato Crop Insurance—Processing Quality Endorsement; Potato Crop Insurance—Certified Seed Endorsement; and Northern Potato Crop Insurance—Storage Coverage Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Northern Potato Crop Insurance—Quality Endorsement; Northern Potato Crop Insurance—Processing Quality Endorsement; Potato Crop Insurance—Certified Seed Endorsement; and Northern Potato Crop Insurance—Storage Coverage Endorsement. The intended effect of this action is to specify that the premium is only applicable for planted acreage under these Endorsements. The Endorsements are designed to protect against losses associated with the final harvested crop (potatoes). For example, the Northern Potato Crop Insurance—Storage Coverage Endorsement extends crop insurance coverage for potatoes that have been harvested and are in storage. Acreage prevented from planting would not need coverage that is specifically designed for a final harvested crop. FCIC is revising the Endorsements to specify that the additional premium (for the Endorsements) is only applicable for planted acreage. The changes to the policies made in this rule are applicable for the 2022 and succeeding crop years for crops with a contract change date on or after April 30, 2021.

DATES:

Effective Date: This final rule is effective April 30, 2021.

Comment Date: We will consider comments that we receive by the close of business June 29, 2021. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by either of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal e*Rulemaking *Portal:* Go to *http://www.regulations.gov* and search for Docket ID FCIC–21–0001. Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, US Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205. In your comment, specify docket ID FCIC–21–0001.

Comments will be available for viewing online at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7829; or email *Francie.Tolle@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. The Risk Management Agency (RMA) administers the FCIC regulations. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIPs) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risk associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable Endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

FCIC amends the Northern Potato Crop Insurance—Quality Endorsement; Northern Potato Crop Insurance—Processing Quality Endorsement; Potato Crop Insurance—Certified Seed Endorsement; and Northern Potato Crop Insurance—Storage Coverage Endorsement. The changes to the policy made in this rule are applicable for the 2022 and succeeding crop years for crops with a contract change date on or after April 30, 2021.

Northern Potato Crop Insurance—Quality Endorsement

The changes to the Northern Potato Crop Insurance—Quality Endorsement (7 CFR part 457.143) are:

- Revising section 2 to specify that the premium is only applicable for *planted* acreage under this Endorsement by stating that the additional premium amount for this coverage will be determined by multiplying the number of your insured planted acres of potatoes by the premium rate for this Endorsement contained in the actuarial documents. As a result of this change, premium will no longer be charged on acres prevented from planting.
- Revising section 2, 4, and 5 to correct the reference to the title within the **Federal Register** of the Northern Potato Crop Insurance Provisions. FCIC is also revising sections 5 and 6 to correct the reference to the title within the **Federal Register** of the Northern Potato Crop Insurance—Storage Coverage Endorsement.
- Revising section 5(a)(1)(i) and 5(a)(2)(i)(A) to replace ''Special Provisions or addendum thereto'' with ''actuarial documents'' to more accurately refer to the location where price elections are published (*i.e.,* prices tab of the actuarial documents). Furthermore, FCIC no longer issues price addendums.
- Revising section 10(b) to change the reference location for fresh and processing types specified in the ''actuarial documents'' to ''Special Provisions'' to be consistent with the references made in the other Potato Endorsements. The fresh and processing types are specified in both the actuarial

documents and Special Provisions; however, other Endorsements refer to the Special Provisions because it is provided to the policyholder in addition to its publication on the RMA website.

Northern Potato Crop Insurance—Processing Quality Endorsement

The changes to the Northern Potato Crop Insurance—Processing Quality Endorsement (7 CFR part 457.144) are:

- Revising section 3 to specify that the premium is only applicable for *planted* acreage under this Endorsement by stating that the additional premium amount for this coverage will be determined by multiplying the number of your insured planted acres of potatoes by the premium rate for this Endorsement contained in the actuarial documents. As a result of this change, premium will no longer be charged on acres prevented from planting.
- Revising section 1, 2, 3, and 8 to correct the reference to the title within the **Federal Register** of the Northern Potato Crop Insurance—Quality Endorsement. FCIC is also revising section 8 and 9 to correct the reference to the title within the **Federal Register** of the Northern Potato Crop Insurance—Storage Coverage Endorsement. FCIC is also revising section 2, 3, and 8 to correct the reference to the title within the **Federal Register** of the Northern Potato Crop Insurance Provisions.
- Revising section 8(a)(1) and 8(b)(1)(i) to replace ''Special Provisions or addendum thereto'' with ''actuarial documents'' to more accurately refer to the location where price elections are published (*i.e.,* prices tab of the actuarial documents). Furthermore, FCIC no longer issues price addendums.

Potato Crop Insurance—Certified Seed Endorsement

The changes to the Northern Potato Crop Insurance—Certified Seed Endorsement (7 CFR part 457.145) are:

FCIC is revising the title of the Endorsement from ''Potato Crop Insurance—Certified Seed Endorsement'' to ''Northern Potato Crop Insurance—Certified Seed Endorsement'' (henceforth referred to as ''Northern Potato Crop Insurance—Certified Seed Endorsement'').

FCIC is revising section 1 to specify that the premium is only applicable for *planted* acreage of certified seed potatoes under this Endorsement by stating that the additional premium amount for this coverage will be determined by multiplying the number of your insured planted acres of certified seed potatoes by the premium rate for this Endorsement contained in the actuarial documents. As a result of this change, premium will no longer be charged on acres prevented from planting.

FCIC is revising sections 1, 4, 8, and 9 to correct the reference to the title within the **Federal Register** of the Northern Potato Crop Insurance Provisions. FCIC is also revising section 1 to correct the reference to the title within the **Federal Register** of the Northern Potato Crop Insurance—Storage Coverage Endorsement.

FCIC is revising sections 7(b) and 7(d) to replace ''Special Provisions'' with ''actuarial documents'' to more accurately refer to the location where price elections are published (*i.e.,* prices tab of the actuarial documents).

Northern Potato Crop Insurance—Storage Coverage Endorsement

The changes to the Northern Potato Crop Insurance—Storage Coverage Endorsement (7 CFR part 457.146) are:

- Revising section 1 to specify that the premium is only applicable for *planted* acreage under this Endorsement by stating that the additional premium amount for this coverage will be determined by multiplying the number of your insured planted acres of potatoes by the premium rate for this Endorsement contained in the actuarial documents. As a result of this change, premium will no longer be charged on acres prevented from planting.
- Revising sections 1, 3, 4, and 5 to correct the reference to the title within the **Federal Register** of the Northern Potato Crop Insurance Provisions.

Effective Date and Notice and Comment

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption.

For major rules, the Congressional Review Act requires a delay the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective April 30, 2021. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or 13563.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by SBREFA, generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because as noted above, this rule is exempt from APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450—Crop Insurance.

Paperwork Reduction Act of 1995

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

For the reasons discussed above, FCIC amends 7 CFR 457 effective for the 2022 and succeeding crop years for crops with a contract change date on or after April 30, 2021, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

■ 2. Amend § 457.143 as follows:
■ a. In the introductory text remove ''2008'' an add ''2022'' in its place;
■ b. Revise section 2;
■ c. In section 4, remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place;
■ d. In section 5:
■ i. In the introductory text, remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place;
■ ii. In paragraph (a)(1) introductory text, remove the phrase ''Northern Potato Storage Coverage Endorsement'' wherever it appears and add in its place the phrase ''Northern Potato Crop Insurance—Storage Coverage Endorsement'' and remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place;

■ iv. In paragraph (a)(1)(i), remove the phrase ''Special Provisions or addendum thereto'' and add ''actuarial documents'' in its place;
■ v. In paragraph (a)(2) introductory text, remove the phrases ''Northern Potato Storage Coverage Endorsement'' and add ''Northern Potato Crop Insurance—Storage Coverage Endorsement'' in its place in all places it appears;
■ vi. In paragraph (a)(2)(i)(A), remove the phrase ''Special Provisions or addendum thereto'' and add ''actuarial documents'' in its place;
■ vii. In paragraph (a)(2)(ii)(A), remove the phrase ''Northern Potato Storage Coverage Endorsement'' and add ''Northern Potato Crop Insurance—Storage Coverage Endorsement'' in its place;
■ viii. In paragraph (a)(2)(ii)(C), remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place;
■ e. In section 6:
■ i. In paragraph (a) introductory text, remove the phrase ''Northern Potato Storage Coverage Endorsement'' and add ''Northern Potato Crop Insurance—Storage Coverage Endorsement'' in its place;
■ ii. In paragraph (b), remove the phrase ''Northern Potato Storage Coverage Endorsement'' and add ''Northern Potato Crop Insurance—Storage Coverage Endorsement'' in its place;
■ f. In section 8, remove the phrase ''stored'' and add ''stored,'' in its place.
■ g. In section 10(b), remove the phrase ''actuarial documents'' and add ''Special Provisions'' in its place.

The revision reads as follows:

§ 457.143 Northern potato crop insurance—quality endorsement.

* * * * *

2. The additional premium amount for this coverage will be determined by multiplying the number of your insured planted acres of potatoes by the premium rate for this Endorsement contained in the actuarial documents. In return for payment of the additional premium designated in the actuarial documents, this Endorsement is attached to and made part of your Northern Potato Crop Insurance Provisions subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Insurance Provisions and this Endorsement, this Endorsement will control.

* * * * *

■ 3. Amend § 457.144 as follows:
■ a. In the introductory text, remove ''2008'' an add ''2022'' in its place;
■ b. Under section 1, in the definition of ''percentage factor'', remove the phrase ''Northern Potato Quality Endorsement'' and add ''Northern Potato Crop Insurance—Quality Endorsement'' in its place;
■ c. In section 2:
■ i. In paragraph (a) introductory text, remove the phrase ''Northern Potato Quality Endorsement'' and add ''Northern Potato Crop Insurance—Quality Endorsement'' in its place;
■ ii. In paragraph (a)(1), remove the phrase ''Northern Potato Quality Endorsement'' and add ''Northern Potato Crop Insurance—Quality Endorsement'' in its place;
■ iii. In paragraph (a)(2), remove the colon after the word ''date'' and add a semicolon in its place;
■ iv. In paragraph (b)(2), remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place and remove the phrase ''Northern Potato Quality Endorsement'' and add ''Northern Potato Crop Insurance—Quality Endorsement'' in its place;
■ d. Revise section 3;
■ e. Under section 4, remove the phrase ''Northern Potato Quality Endorsement'' and add ''Northern Potato Crop Insurance—Quality Endorsement'' in its place;
■ f. In section 8:
■ i. In the introductory text, remove the phrase ''Northern Potato Quality Endorsement'' and add ''Northern Potato Crop Insurance—Quality Endorsement'' in its place;
■ ii. In the introductory text, remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' wherevers it appears;
■ iii. In paragraph (a) introductory text, remove the phrases ''Northern Potato Storage Coverage Endorsement'' and add ''Northern Potato Crop Insurance—Storage Coverage Endorsement'' in its place in all places it appears;
■ iv. In paragraph (a)(1), remove the phrase ''Special Provisions or addendum thereto'' and add ''actuarial documents'' in its place;
■ v. In paragraph (b) introductory text, remove the phrases ''Northern Potato Storage Coverage Endorsement'' and add ''Northern Potato Crop Insurance—Storage Coverage Endorsement'' in its place in all places it appears;
■ vi. In paragraph (b)(1)(i), remove the phrase ''Special Provisions or addendum thereto'' and add ''actuarial documents'' in its place;
■ vii. In paragraph (b)(2)(i) introductory text, remove the phrase ''Northern Potato Storage Coverage Endorsement'' and add ''Northern Potato Crop Insurance—Storage Coverage Endorsement'' in its place;
■ viii. In paragraph (b)(2)(i)(B), remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place;
■ g. In section 9:
■ i. In paragraph (a) introductory text, remove the phrase ''Northern Potato Storage Coverage Endorsement'' and add ''Northern Potato Crop Insurance—Storage Coverage Endorsement'' in its place;
■ ii. In paragraph (b), remove the phrase ''Northern Potato Storage Coverage Endorsement'' and add ''Northern Potato Crop Insurance—Storage Coverage Endorsement'' in its place;

The revisions read as follows:

§ 457.144 Northern potato crop insurance—processing quality endorsement.

* * * * *

3. The additional premium amount for this coverage will be determined by multiplying the number of your insured planted acres of potatoes by the premium rate for this Endorsement contained in the actuarial documents. In return for payment of the additional premium designated in the actuarial documents, this Endorsement is attached to and made part of your Northern Potato Crop Insurance Provisions and Northern Potato Crop Insurance—Quality Endorsement subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Insurance Provisions or Northern Potato Crop Insurance—Quality Endorsement and this Endorsement, this Endorsement will control.

* * * * *

■ 4. Amend § 457.145 as follows:
■ a. Revise the section heading;
■ b. In the introductory text:
■ i. Remove the phrases ''Potato Crop Insurance Certified Seed Endorsement Provisions'' and add ''Northern Potato Crop Insurance Certified Seed Endorsement Provisions'' in its place wherever it appears;
■ ii. Remove ''2008'' an add ''2022'' in its place;
■ c. Revise section 1;
■ d. In section 4, in the introductory text, remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place;
■ e. In section 7:
■ i. In paragraph (b), remove the phrase ''Special Provisions'' and add ''actuarial documents'' in its place;
■ ii. In paragraph (d), remove the phrase ''Special Provisions'' and add ''actuarial documents'' in its place;

■ f. In section 8, in the introductory text, remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place;
■ g. In section 9:
■ i. Remove the phrases ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place in all places it appears;
■ ii. Remove the phrases ''Northern Potato Crop Insurance Policy'' and add ''Northern Potato Crop Insurance Provisions'' in its place in all places it appears.

The revisions read as follows:

§ 457.145 Northern potato crop insurance—certified seed endorsement.

* * * * *

1. The additional premium amount for this coverage will be determined by multiplying the number of your insured planted acres of certified seed potatoes by the premium rate for this Endorsement contained in the actuarial documents. In return for payment of the additional premium designated in the actuarial documents, this Endorsement is attached to and made part of your Northern Potato Crop Insurance Provisions subject to the terms and conditions described herein. In accordance with section 8, since your insurance period is not extended in this Endorsement, any additional premium paid for coverage under the Northern Potato Crop Insurance—Storage Coverage Endorsement will not apply to the additional coverage provided under the terms of this Endorsement. In the event of a conflict between the Northern Potato Crop Insurance Provisions and this Endorsement, this Endorsement will control.

* * * * *

■ 5. Amend § 457.146 as follows:
■ a. In the introductory text, remove ''2008'' an add ''2022'' in its place;
■ b. Revise section 1;
■ c. In section 3, remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place;
■ d. In section 4, remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place;
■ e. In section 5:
■ i. In the introductory text, remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place;
■ ii. In paragraph (a)(1), remove the phrase ''Northern Potato Crop Provisions'' and add ''Northern Potato Crop Insurance Provisions'' in its place;
■ iii. In paragraph (a)(2), remove the phrases ''Northern Potato Crop Insurance Quality Endorsement'' and add ''Northern Potato Crop Insurance—Quality Endorsement'' in its place; and
■ iv. In paragraph (a)(3) introductory text, remove the phrase ''Northern Potato Processing Quality Endorsement'' and add ''Northern Potato Crop Insurance—Processing Quality Endorsement'' in its place;

The revision reads as follows:

§ 457.146 Northern potato crop insurance—storage coverage endorsement.

* * * * *

1. The additional premium amount for this coverage will be determined by multiplying the number of your insured planted acres of potatoes by the premium rate for this Endorsement contained in the actuarial documents. In return for payment of the required additional premium as contained in the actuarial documents, this Endorsement is attached to and made part of your Northern Potato Crop Insurance Provisions subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Insurance Provisions and this Endorsement, this Endorsement will control.

* * * * *

Richard H. Flournoy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2021–08955 Filed 4–29–21; 8:45 am]

BILLING CODE 3410–08–P

FEDERAL RESERVE SYSTEM

12 CFR Part 252

[Docket R–1603]

RIN 7100–AF02

Regulation YY: Stress Test Rules; Correction

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule; correcting amendment.

SUMMARY: The Board is issuing this final rule to correct an error in its Regulation YY (Enhanced Prudential Standards) relating to the company-run stress test requirements for certain large banking organizations.

DATES: This final rule is effective April 30, 2021.

FOR FURTHER INFORMATION CONTACT: Benjamin McDonough, Associate General Counsel, (202) 452–2036; Julie Anthony, Senior Counsel, (202) 475–6682; Asad Kudiya, Senior Counsel, (202) 475–6358; Jonah Kind, Counsel, 202–452–2045, or Jasmin Keskinen, Attorney, (202) 475–6650, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunications Device for the Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board is making a technical correction to a provision of its rules regarding company-run stress test requirements for certain U.S. bank holding companies, certain U.S. intermediate holding companies of foreign banking organizations, and nonbank financial companies supervised by the Board.[1] In a final rule published in March 2020 (SCB final rule),[2] the Board adopted a proposal [3] (SCB proposal) to amend its capital rule, capital plan rule, and stress testing rules [4] in order to integrate the capital rule with the Board's Comprehensive Capital Analysis and Review by introducing the stress capital buffer (SCB) requirement.[5] Also in the SCB final rule, the Board amended its stress testing rules to incorporate a definition of ''significant trading activity'' into the Board's company-run stress test requirements in order to increase transparency regarding the application of an additional trading and counterparty scenario component. In doing so, the Board inadvertently deleted from these rules language regarding the timing of certain aspects of the trading and counterparty component of the company-run stress test. The deletion of this language did not reflect the amendments to the rule described in the Supplementary Information section of the SCB final rule and was not included or described in the SCB proposal.

This final rule corrects the Board's stress testing rules by restoring the inadvertently deleted regulatory text. Specifically, the technical correction revises these rules by adding to section 252.54(b)(2)(i) of Regulation YY language indicating that the data used in the trading and counterparty component of the company-run stress test must be as of a date selected by the Board between October 1 of the previous calendar year and March 1 of the

[1] 12 CFR 252.54(b)(2)(i).

[2] Regulations Q, Y, and YY: Regulatory Capital, Capital Plan, and Stress Test Rules, 85 FR 15576 (March 18, 2020). The SCB final rule took effect on May 18, 2020.

[3] 80 FR 18160 (April 25, 2018).

[4] 12 CFR part 217 (Regulation Q); 12 CFR part 225 (Regulation Y); and 12 CFR part 252 (Regulation YY), respectively.

[5] 85 FR 15576 (March 18, 2020).

calendar year in which the stress test is performed pursuant to this section, and that the Board will communicate the as-of date and a description of the component to the company no later than March 1 of the calendar year in which the stress test is performed.

Administrative Law

A. Administrative Procedure Act

The Board is issuing this final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[6] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [7]

The Board believes that the public interest is best served by implementing the final rule as soon as possible. Public comment is unnecessary, as the SCB final rule was previously issued for comment, and the technical edits discussed here merely correct drafting errors in the SCB final rule.

The corrections made by this final rule will reduce ambiguity and ensure that banking organizations implement the company-run stress test in a consistent manner and as described in the Supplementary Information section of the SCB final rule and other final rules adopted by the Board.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[8] The Board finds good cause to publish the final rule correction with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. This final rule does not contain any collections of information, and therefore no submissions will be made by the Board to OMB in connection with this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [9] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[10] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the Board has determined for good cause that general notice and opportunity for public comment is unnecessary and contrary to the public's interest, and therefore the Board is not issuing a notice of proposed rulemaking. Accordingly, the Board has concluded that the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [11] requires the Federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the Board has sought to present the final rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 252

Administrative practice and procedure, Banks, Banking, Capital planning, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

Subpart F—Company-Run Stress Test Requirements for Certain U.S. Bank Holding Companies and Nonbank Financial Companies Supervised by the Board

■ 2. In § 252.54 by revise paragraph (b)(2)(i) introductory text to read as follows:

§ 252.54 Stress test.

* * * * *

(b) * * *

(2) * * *

(i) The Board may require a covered company with significant trading activity to include a trading and counterparty component in its severely adverse scenario in the stress test required by this section. The data used in this component must be as of a date selected by the Board between October 1 of the previous calendar year and March 1 of the calendar year in which the stress test is performed pursuant to this section, and the Board will communicate the as-of date and a description of the component to the company no later than March 1 of the calendar year in which the stress test is performed pursuant to this section. A covered company has significant trading activity if it has:

* * * * *

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

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–09011 Filed 4–29–21; 8:45 am]

BILLING CODE P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2021–0003]

RIN 3170–AA98

Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition; Delay of Mandatory Compliance Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule to delay until October 1, 2022 the mandatory compliance date for the final rule titled Qualified Mortgage Definition under the Truth in Lending

[6] 5 U.S.C. 553.

[7] 5 U.S.C. 553(b)(B).

[8] 5 U.S.C. 553(d).

[9] 5 U.S.C. 601 *et seq.*

[10] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with average annual receipts of $41.5 million or less. *See* 13 CFR 121.201.

[11] 12 U.S.C. 4809.

Act (Regulation Z): General QM Loan Definition (General QM Final Rule). The Bureau is taking this action to help ensure access to responsible, affordable mortgage credit and to preserve flexibility for consumers affected by the COVID–19 pandemic and its economic effects.

DATES: *Effective date:* This final rule is effective on June 30, 2021.

Compliance date: Compliance with the final rule published December 29, 2020, at 85 FR 86308, is delayed until October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Waeiz Syed, Counsel or Ben Cady, Senior Counsel, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

The Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule) requires a creditor to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan according to its terms. Loans that meet the ATR/QM Rule's requirements for qualified mortgages (QMs) obtain certain protections from liability. The ATR/QM Rule defines several categories of QMs.

One QM category defined in the ATR/QM Rule is the General QM category. General QMs must comply with the ATR/QM Rule's prohibitions on certain loan features, points-and-fees limits, and underwriting requirements. Under the original ATR/QM Rule, the ratio of the consumer's total monthly debt to total monthly income (DTI or DTI ratio) could not exceed 43 percent for a loan to meet the General QM loan definition (original, DTI-based General QM loan definition).[1] In December 2020, the Bureau issued the General QM Final Rule, which amended Regulation Z by replacing the original, DTI-based General QM loan definition with a limit based on loan pricing and by making other changes to the General QM loan definition (revised, price-based General QM loan definition).[2] The General QM Final Rule took effect on March 1, 2021, and it provided a mandatory compliance date of July 1, 2021. Under the General QM Final Rule, as issued in December 2020, for covered transactions for which creditors receive an application on or after the March 1, 2021 effective date but prior to the July 1, 2021 mandatory compliance date, creditors had the option of complying with either the original, DTI-based General QM loan definition or the revised, price-based General QM loan definition. Only the revised, price-based General QM loan definition would have been available for applications received on or after the July 1, 2021 mandatory compliance date.

On March 3, 2021, the Bureau released for public comment a proposal to delay the General QM Final Rule's mandatory compliance date from July 1, 2021 to October 1, 2022. After considering the comments, the Bureau is issuing this final rule delaying the General QM Final Rule's mandatory compliance date as proposed. Specifically, this final rule amends comments 43–2 and 43(e)(4)–2 and –3 to reflect a delay of the mandatory compliance date by changing the date ''July 1, 2021'' where it appears in those comments to ''October 1, 2022.'' The final rule also adds new comment 43(e)(2)–1 to clarify the General QM loan definitions available to creditors for applications received on or after March 1, 2021, but prior to October 1, 2022.

For covered transactions for which creditors receive an application on or after March 1, 2021, but prior to October 1, 2022, creditors will have the option of complying with either the original, DTI-based General QM loan definition or the revised, price-based General QM loan definition. Under the final rule, only the revised, price-based General QM loan definition will be available for applications received on or after the October 1, 2022 mandatory compliance date.

The ATR/QM Rule also defines a temporary category of QMs that is also affected by this final rule. That temporary category of QMs includes mortgages that (1) comply with the same loan-feature prohibitions and points-and-fees limits as General QMs and (2) are eligible to be purchased or guaranteed by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the government-sponsored enterprises or GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). This final rule refers to these loans as Temporary GSE QM loans, and the provision that created this loan category is commonly known as the GSE Patch. In October 2020, the Bureau issued a final rule stating that the Temporary GSE QM loan definition will be available only for covered transactions for which the creditor receives the consumer's application before the mandatory compliance date of the General QM Final Rule.[3] Under the General QM Final Rule, the Temporary GSE QM loan definition would have expired on the earlier of July 1, 2021 or the date the applicable GSE exits Federal conservatorship. Under this final rule, the Temporary GSE QM loan definition will expire upon the earlier of October 1, 2022, or the date the applicable GSE exits Federal conservatorship.

As discussed below, this final rule delays the mandatory compliance date of the General QM Final Rule to help ensure access to responsible, affordable mortgage credit and to preserve flexibility for consumers affected by the COVID–19 pandemic and its economic effects. This final rule does not make any other changes to the General QM loan definition. The Bureau plans to evaluate the General QM Final Rule's amendments to the General QM loan definition and will consider at a later date whether to initiate another rulemaking to reconsider other aspects of the General QM loan definition.

The effective date of this final rule is June 30, 2021.

II. Background

A. Dodd-Frank Act Amendments to the Truth in Lending Act and the General QM Loan Definition

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[4] amended the Truth in Lending Act (TILA)[5] to establish, among other things, ability-to-repay (ATR) requirements in connection with the origination of most residential mortgage loans.[6] As amended by the Dodd-Frank Act, TILA prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan.[7] TILA identifies the factors a creditor must consider in making a reasonable and good faith

[1] 12 CFR 1026.43(e)(2)(vi), as was in effect on February 26, 2021.

[2] 85 FR 86308 (Dec. 29, 2020).

[3] 85 FR 67938 (Oct. 26, 2020).

[4] Pub. L. 111–203, 124 Stat. 1376 (2010).

[5] 15 U.S.C. 1601 *et seq.*

[6] Dodd-Frank Act sections 1411–12, 1414, 124 Stat. 1376, 2142–49; 15 U.S.C. 1639c.

[7] 15 U.S.C. 1639c(a)(1). TILA section 103 defines ''residential mortgage loan'' to mean, with some exceptions including open-end credit plans, ''any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling.'' 15 U.S.C. 1602(dd)(5). TILA section 129C also exempts certain residential mortgage loans from the ATR requirements. *See, e.g.,* 15 U.S.C. 1639c(a)(8) (exempting reverse mortgages and temporary or bridge loans with a term of 12 months or less).

assessment of a consumer's ability to repay. These factors are the consumer's credit history, current and expected income, current obligations, DTI ratio or residual income after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than equity in the dwelling or real property that secures repayment of the loan.[8]

A creditor may not be certain whether its ATR determination is reasonable in a particular case. TILA addresses this potential uncertainty by defining a category of loans—called QMs—for which a creditor ''may presume that the loan has met'' the ATR requirements.[9] The statute generally defines a QM to mean any residential mortgage loan for which:

- The loan does not have negative amortization, interest-only payments, or balloon payments;
- The loan term does not exceed 30 years;
- The total points and fees generally do not exceed 3 percent of the loan amount;
- The income and assets relied upon for repayment are verified and documented;
- The underwriting uses a monthly payment based on the maximum rate during the first five years, uses a payment schedule that fully amortizes the loan over the loan term, and takes into account all mortgage-related obligations; and
- The loan complies with any guidelines or regulations established by the Bureau relating to the ratio of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt.[10]

In January 2013, the Bureau issued a final rule amending Regulation Z to implement TILA's ATR requirements and define several categories of QM loans (January 2013 Final Rule).[11] This final rule refers to the January 2013 Final Rule and later amendments [12] to it collectively as the ATR/QM Rule or the Rule. One category of QMs defined by the ATR/QM Rule consists of General QMs. The January 2013 Final Rule provided that a loan was a General QM if:

- The loan does not have negative-amortization, interest-only, or balloon-payment features, a term that exceeds 30 years, or points and fees that exceed specified limits; [13]
- The creditor underwrites the loan based on a fully amortizing schedule using the maximum rate permitted during the first five years; [14]
- The creditor considers and verifies the consumer's income and debt obligations in accordance with appendix Q; [15] and
- The consumer's DTI ratio is no more than 43 percent, determined in accordance with appendix Q.[16]

Appendix Q contained standards for calculating and verifying debt and income for purposes of determining whether a mortgage satisfies the 43 percent debt-to-income ratio limit (DTI limit) for General QMs. The standards in appendix Q were adapted from guidelines maintained by the Federal Housing Administration (FHA) when the January 2013 Final Rule was issued.[17]

As discussed above, another category of QMs defined by the January 2013 Final Rule, Temporary GSE QMs, consists of mortgages that (1) comply with the ATR/QM Rule's prohibitions on certain loan features and its limitations on points and fees [18] and (2) are eligible to be purchased or guaranteed by either GSE while under the conservatorship of FHFA.[19] Unlike for General QMs, the January 2013 Final Rule did not prescribe a DTI limit for Temporary GSE QMs nor did it require use of appendix Q to verify and calculate debt, income, and DTI ratios. The January 2013 Final Rule provided that the Temporary GSE QM loan definition would expire with respect to each GSE when that GSE ceases to operate under conservatorship or on January 10, 2021, whichever occurred first.[20]

In 2020, the Bureau issued three final rules amending the ATR/QM Rule, two of which relate to this final rule.[21] These two final rules are discussed below.

1. The Patch Extension Final Rule

The Bureau issued the Patch Extension Final Rule on October 20, 2020. It was published in the **Federal Register** on October 26, 2020.[22] The Patch Extension Final Rule amended Regulation Z to replace the January 10, 2021 sunset date of the Temporary GSE QM loan definition with a provision stating that the Temporary GSE QM loan definition will be available only for covered transactions for which the creditor receives the consumer's application before the mandatory compliance date of final amendments to the General QM loan definition in Regulation Z. The Patch Extension Final Rule did not amend the clause providing that the Temporary GSE QM loan definition expires on the date the applicable GSE exits Federal conservatorship. Therefore, under the Patch Extension Final Rule, the Temporary GSE QM loan definition will expire on the mandatory compliance date of final amendments to the General QM loan definition or the date the applicable GSE exits Federal conservatorship, whichever comes first.

2. The General QM Final Rule

The Bureau issued the General QM Final Rule on December 10, 2020. It was published in the **Federal Register** on December 29, 2020.[23] The General QM Final Rule amended Regulation Z to remove the General QM loan definition's DTI limit (and appendix Q) and replace it with limits based on the loan's pricing. Under the amended rule, a loan meets the General QM loan definition only if the annual percentage rate (APR) exceeds the average prime offer rate (APOR) for a comparable transaction by less than 2.25 percentage points as of the date the interest rate is set. The General QM Final Rule provided higher thresholds for loans with smaller loan amounts, for certain manufactured housing loans, and for subordinate-lien transactions. The General QM Final Rule requires the creditor to consider the consumer's DTI ratio or residual income and to consider and verify the consumer's income or assets other than the value of the dwelling and the consumer's debts. The General QM Final Rule also provides a safe harbor for compliance with this verification requirement if a creditor complies with verification standards in

[8] 15 U.S.C. 1639c(a)(3).

[9] 15 U.S.C. 1639c(b)(1).

[10] 15 U.S.C. 1639c(b)(2)(A).

[11] 78 FR 6408 (Jan. 30, 2013).

[12] As discussed in part II.C below, the Bureau made several amendments to the ATR/QM Rule in 2020. Prior to 2020, the Bureau made several other amendments to the ATR/QM Rule. *See* 78 FR 35429 (June 12, 2013); 78 FR 44686 (July 24, 2013); 78 FR 60382 (Oct. 1, 2013); 79 FR 65300 (Nov. 3, 2014); 80 FR 59944 (Oct. 2, 2015); 81 FR 16074 (Mar. 25, 2016); 85 FR 67938 (Oct. 26, 2020).

[13] 12 CFR 1026.43(e)(2)(i) through (iii).

[14] 12 CFR 1026.43(e)(2)(iv).

[15] 12 CFR 1026.43(e)(2)(v), as was in effect on February 26, 2021.

[16] 12 CFR 1026.43(e)(2)(vi), as was in effect on February 26, 2021.

[17] 78 FR 6408, 6527–28 (Jan. 30, 2013) (noting that appendix Q incorporates, with certain modifications, the definitions and standards in HUD Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four-Unit Mortgage Loans).

[18] 12 CFR 1026.43(e)(2)(i) through (iii).

[19] 12 CFR 1026.43(e)(4), as was in effect on February 26, 2021.

[20] 12 CFR 1026.43(e)(4)(ii)(A) and 1026.43(e)(4)(iii)(B), as was in effect on February 26, 2021.

[21] The third rule amending the ATR/QM Rule that the Bureau issued in 2020 was the Seasoned QM Final Rule. *See* 85 FR 86402 (Dec. 29, 2020).

[22] 85 FR 67938 (Oct. 26, 2020).

[23] 85 FR 86308 (Dec. 29, 2020).

certain manuals listed in the rule.[24] The General QM Final Rule had an effective date of March 1, 2021, and a mandatory compliance date of July 1, 2021.

B. February 2021 Statement Regarding General QM and Seasoned QM Final Rules

On February 23, 2021, the Bureau issued a statement titled ''Statement on Mandatory Compliance Date of General QM Final Rule and Possible Reconsideration of General QM Final Rule and Seasoned QM Final Rule'' (February 23, 2021 Statement or Statement).[25] The Statement was published in the **Federal Register** on February 26, 2021.[26] In it, the Bureau stated, in relevant part, that it expected to issue a proposal to delay the July 1, 2021 mandatory compliance date of the General QM Final Rule. The Bureau stated that it would consider at a later date whether to initiate another rulemaking to reconsider other aspects of the General QM loan definition. The Statement also indicated that the Bureau is considering whether to initiate a rulemaking to revisit another final rule that it issued in December 2020, the Seasoned QM Final Rule.[27]

C. The General QM Mandatory Compliance Date Delay Proposal

On March 3, 2021, the Bureau released a proposal to delay the General QM Final Rule's mandatory compliance date from July 1, 2021 to October 1, 2022 (the proposal). The proposal was published in the **Federal Register** on March 5, 2021.[28] In the proposal, the Bureau preliminarily concluded that delaying the mandatory compliance date to October 1, 2022 would help ensure access to responsible, affordable mortgage credit and preserve flexibility for consumers affected by the COVID–19 pandemic and its economic effects. The comment period for the proposal ended on April 5, 2021. The Bureau received 24 unique comments on the proposal. The Bureau summarizes and responds to these comments in part IV below.

D. The Effects of the COVID–19 Pandemic on the Mortgage Markets

As discussed above and in the proposal, the Bureau is delaying the General QM Final Rule's mandatory compliance date to help those affected by the COVID–19 pandemic and its economic effects. The General QM Final Rule acknowledged that the COVID–19 pandemic has had a significant effect on the U.S. economy. In the early months of the pandemic, economic activity contracted, millions of workers became unemployed, and mortgage markets were affected. Although the unemployment rate has declined from a high of 14.8 percent in April 2020 to 6.0 percent in March 2021,[29] unemployment remains elevated relative to the pre-pandemic rate of 3.5 percent in February 2020, and the labor force participation rate remains below pre-pandemic levels, at 61.5 percent in March 2021 versus 63.3 percent in February 2020. The housing market has seen a significant rebound in mortgage-origination activity, buoyed by historically low interest rates and by an increasingly large share of GSE-backed loans. However, the share of origination activity outside the GSE-backed origination channel has declined from pre-pandemic levels, and mortgage-credit availability for many consumers—including those who would be dependent on the non-QM market for financing—remains tighter than prior to the pandemic.[30] The pandemic's impact on both the secondary market for new originations and on the servicing of existing mortgages is described below.

1. Secondary Market Impacts and Implications for Mortgage Origination Markets

The early economic disruptions associated with the COVID–19 pandemic restricted the flow of credit in the U.S. economy, particularly as uncertainty rose in mid-March 2020, and investors moved rapidly towards cash and government securities.[31] The lack of investor demand to purchase mortgages, combined with a large supply of agency mortgage-backed securities (MBS) entering the market,[32] resulted in widening spreads between the rates on a 10-year Treasury note and mortgage interest rates.[33] This dynamic made it difficult for creditors to originate loans, as many creditors rely on the ability to profitably sell loans in the secondary market to generate the liquidity to originate new loans. This resulted in mortgages becoming more expensive for both homebuyers and homeowners looking to refinance. After the actions taken by the Board of Governors of the Federal Reserve System (Board) in March 2020 to purchase agency MBS ''in the amounts needed to support smooth market functioning and effective transmission of monetary policy to broader financial conditions and the economy,'' [34] market conditions improved substantially.[35] This helped to stabilize the MBS market and resulted in a decline in mortgage rates and a significant increase in refinance activity since the Board's intervention.

Because non-agency MBS [36] are generally perceived by investors as riskier than agency MBS, the market for non-agency and non-QM mortgage credit significantly contracted in the early months of the pandemic. Issuance of non-agency MBS declined by 8.2 percent in the first quarter of 2020, with nearly all the transactions completed in January and February before the COVID–19 pandemic began to affect the economy significantly.[37] Nearly all major non-QM creditors ceased making loans in March and April 2020. The non-QM market has since been recovering, with strong investor demand for non-QM MBS due to better-than-expected performance during the pandemic.[38] Many non-QM creditors—

[24] *See* comment 43(e)(2)(v)(B)–3.i.

[25] Bureau of Consumer Fin. Prot., *Statement on Mandatory Compliance Date of General QM Final Rule and Possible Reconsideration of General QM Final Rule and Seasoned QM Final Rule* (Feb. 23, 2021), *https://www.consumerfinance.gov/documents/9505/cfpb_qm-statement_2021-02.pdf.*

[26] 86 FR 11623 (Feb. 26, 2021).

[27] 85 FR 86402 (Dec. 29, 2020).

[28] 86 FR 12839 (Mar. 5, 2021).

[29] News Release, Bureau of Labor Statistics, U.S. Dep't of Labor, USDL–21–0582, *The Employment Situation* (Apr. 2, 2021), *https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm,* and *https://www.bls.gov/charts/employment-situation/civilian-labor-force-participation-rate.htm* (charts related to the Apr. 2, 2021 *The Employment Situation* news release).

[30] Brandon Ivey, *Expanded-Credit Originations See Recovery in 4Q20,* Inside Mortg. Fin. (Mar. 12, 2021), *https://www.insidemortgagefinance.com/articles/220770-expanded-credit-mortgage-originations-slowly-recovering-from-shock.*

[31] The Coronavirus Aid, Relief, and Economic Security Act, CARES Act: *Hearing on The Quarterly CARES Act Report to Congress Before the S. Comm. on Banking, Hous., & Urban Affairs,* 116th Cong. 2–3 (2020) (statement of Jerome H. Powell, Chairman, Bd. of Governors of the Fed. Reserve Sys.), *https://www.banking.senate.gov/imo/media/doc/Powell%20Testimony%205-19-20.pdf* (CARES Act Hearing).

[32] Agency MBS are backed by loans guaranteed by Fannie Mae, Freddie Mac, and the Government National Mortgage Association (Ginnie Mae).

[33] Laurie Goodman *et al.,* Urban Inst., *Housing Finance at a Glance, Monthly Chartbook* (Mar. 26, 2020), *https://www.urban.org/sites/default/files/publication/101926/housing-finance-at-a-glance-a-monthly-chartbook-march-2020.pdf* (*Housing Finance at a Glance*) (on file).

[34] Press Release, Bd. of Governors of the Fed. Reserve Sys., *Federal Reserve announces extensive new measures to support the economy* (Mar. 23, 2020), *https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm.*

[35] CARES Act Hearing, *supra* note 30, at 3.

[36] Non-agency MBS are not backed by loans guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae. This includes securities collateralized by non-QM loans.

[37] Brandon Ivey, *Non-Agency MBS Issuance Slowed in First Quarter,* Inside Mortg. Fin. (Apr. 3, 2020), *https://www.insidemortgagefinance.com/articles/217623-non-agency-mbs-issuance-slowed-in-first-quarter (on file).*

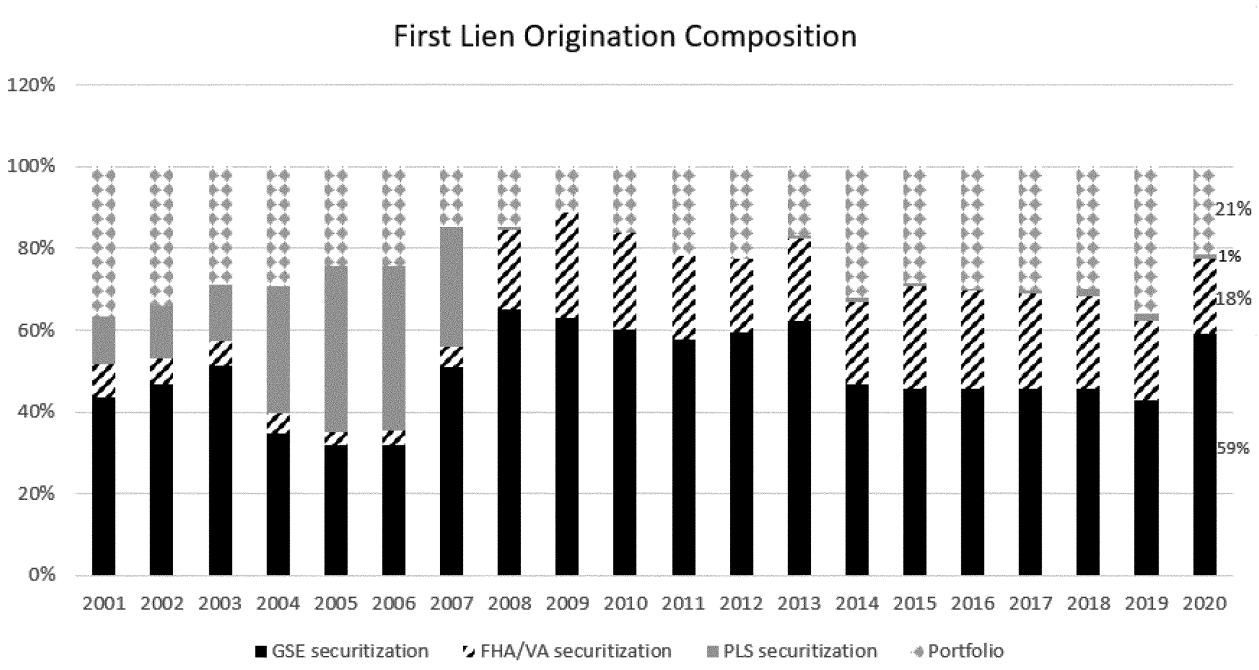
[38] Bandon Ivey, *Non-QM MBS Issuers Ready. But Where Are the Loans?,* Inside Mortg. Fin. (Jan. 29,

Continued

which largely depend on the ability to sell loans in the secondary market in order to fund new loans—have resumed originations, although some continue to maintain tighter underwriting requirements compared to prior to the pandemic.[39] Other creditors that have typically specialized in non-QM financing have shifted their focus to GSE originations due to historically low interest rates and the relative speed and ease with which GSE loans can be originated. Nonetheless, many non-QM creditors and investors expect the non-agency market to continue to strengthen in 2021 and recover to its pre-pandemic levels of production.[40] Because many of these loans that were historically considered non-QM may qualify for QM status under the revised, price-based General QM loan definition, it is unclear how quickly the market for non-QM loans that fall outside of existing QM definitions will develop.

As illustrated in Figure 1, the GSEs continue to play a dominant role in the market recovery, with the GSE share of first-lien mortgage originations at 59 percent in 2020, up from 43 percent in 2019. One analysis found that the FHA and U.S. Department of Veterans Affairs (VA) share declined slightly to 18 percent from 19 percent a year prior.[41] Portfolio lending declined to 21 percent in 2020, down from 36 percent in the third quarter of 2019, and private label securitizations declined to 1 percent from 2 percent a year prior.

Figure 1



Sources: Urban Institute analysis of Inside Mortgage Finance data (used with permission from Urban Institute)

2. Servicing Market Impacts and Implications for Origination Markets

In addition to the direct impact on origination volume and composition, the pandemic's impact on the mortgage servicing market has downstream effects on mortgage originations, as many of the same entities both originate and service mortgages. Anticipating that a number of homeowners would struggle to pay their mortgages due to the pandemic and related economic impacts, Congress passed and the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)[42] in March 2020. The CARES Act provides certain protections for borrowers with federally backed mortgages, such as those whose mortgages are purchased or securitized by a GSE or insured or guaranteed by the FHA, VA, or U.S. Department of Agriculture (USDA). The CARES Act mandated a 60-day foreclosure moratorium for such mortgages and allowed borrowers to request up to 180 days of forbearance due to a COVID–19-related financial hardship, with an option to extend the forbearance period for an additional 180 days.

2021), *https://www.insidemortgagefinance.com/articles/220373-non-qm-originations-and-mbs-ready-to-rebound-after-the-refi-boom (on file).*

[39] Brandon Ivey, *Expanded-Credit Lending Inches Up in Third Quarter,* Inside Mortg. Fin. (Nov. 25, 2020), *https://www.insidemortgagefinance.com/articles/219861-expanded-credit-lending-ticks-up-in-3q-amid-slow-recovery (on file).*

[40] Brandon Ivey, *Outlook on Non-Agency MBS Issuance: Bright and Gloomy,* Inside Mortg. Fin. (Jan. 15, 2021), *https://www.insidemortgagefinance.com/articles/220261-mixed-views-on-the-outlook-for-non-agency-mbs-issuance-in-2021 (on file).*

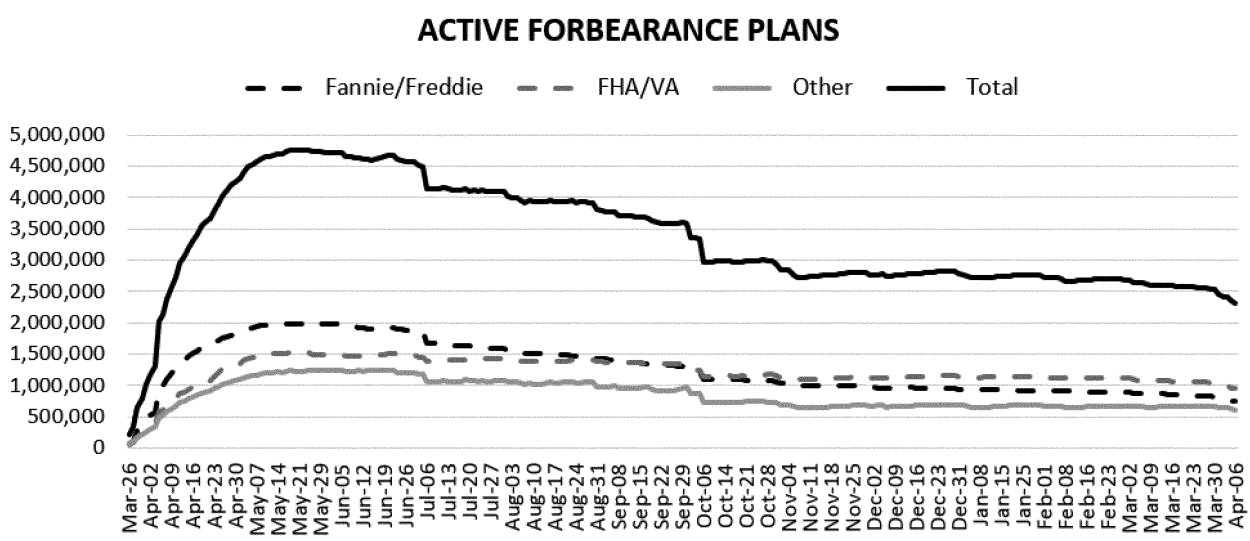
[41] Laurie Goodman *et al.,* Urban Inst., *Housing Finance at a Glance, Monthly Chartbook* (Feb. 2021), *https://www.urban.org/sites/default/files/publication/103746/housing-finance-at-a-glance-a-monthly-chartbook-february-2021_0.pdf* (*Housing Finance at a Glance*).

[42] Public Law 116–136, 134 Stat. 281 (2020).

FHFA recently announced that borrowers with a mortgage backed by the GSEs may be eligible for two additional three-month forbearance extensions, for a total of up to 18 months of forbearance, for certain borrowers who began a COVID–19 forbearance on or before February 28, 2021. On February 16, 2021, FHA, VA, and USDA also provided up to six months of additional mortgage forbearance, in three-month increments, for borrowers who entered forbearance on or before June 30, 2020. FHA, VA, and USDA also extended the foreclosure moratorium on government-insured and guaranteed loans until June 30, 2021, from the previous expiration date of March 31, 2021, and the GSEs announced a similar extension on February 25, 2021.[43] The government agencies also announced an extension in the forbearance enrollment window until June 30, 2021, to provide additional time for borrowers to request a COVID–19 forbearance. FHFA has not yet announced a deadline for borrowers with mortgages backed by the GSEs to enroll in a COVID–19 forbearance plan.

Following the passage of the CARES Act, some mortgage servicers remain obligated to make some principal and interest payments to investors in GSE and Ginnie Mae securities, even if consumers are not making payments.[44] Servicers also remain obligated to make escrowed real estate tax and insurance payments to local taxing authorities and insurance companies. While servicers are required to hold liquid reserves to cover anticipated advances, early in the pandemic there were significant concerns that higher-than-expected forbearance rates over an extended period of time could lead to liquidity shortages, particularly among many non-bank servicers. While forbearance rates remain elevated at 4.66 percent for the week ending April 4, 2021, they have decreased since reaching their high of 8.55 percent on June 7, 2020, as illustrated in Figure 2 below.[45]

Figure 2



Source: Black Knight, Inc. (used with permission from Black Knight, Inc.).

Because many mortgage servicers also originate the loans they service, many creditors, as well as several warehouse providers,[46] initially responded to the risk of elevated forbearances and higher-than-expected monthly advances by imposing credit overlays—*i.e.,* additional underwriting standards—for new originations. These new underwriting standards included more stringent requirements for non-QM, jumbo, and government loans.[47] An

[43] Press Release, The White House, *Fact Sheet: Biden Administration Announces Extension of COVID–19 Forbearance and Foreclosure Protections for Homeowners* (Feb. 16, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/. See also* Press Release, Fed. Hous. Fin. Agency, *FHFA Extends COVID–19 Forbearance Period and Foreclosure and REO Eviction Moratoriums* (Feb. 25, 2021), *https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-COVID-19-Forbearance-Period-and-Foreclosure-and-REO-Eviction-Moratoriums.aspx.*

[44] The GSEs typically repurchase loans out of the trust after they fall 120 days delinquent, after which the servicer is no longer required to advance principal and interest, but Ginnie Mae requires servicers to advance principal and interest until the default is resolved. On April 21, 2020, FHFA confirmed that servicers of GSE loans will only be required to advance four months of mortgage payments, regardless of whether the GSEs repurchase the loans from the trust after 120 days of delinquency. Fed. Hous. Fin. Agency, *FHFA Addresses Servicer Liquidity Concerns, Announces Four Month Advance Obligation Limit for Loans in Forbearance* (Apr. 21, 2020), *https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Addresses-Servicer-Liquidity-Concerns-Announces-Four-Month-Advance-Obligation-Limit-for-Loans-in-Forbearance.aspx.*

[45] Press Release, Mortg. Bankers Ass'n, *Share of Mortgage Loans in Forbearance Decreases to 4.66%* (April 12, 2021), *https://www.mba.org/2021-press-releases/april/share-of-mortgage-loans-in-forbearance-decreases-to-466-percent.*

[46] Warehouse providers are creditors that provide financing to mortgage originators and servicers to fund and service loans.

[47] Maria Volkova, *FHA/VA Lenders Raise Credit Score Requirements,* Inside Mortg. Fin. (Apr. 3, 2020), *https://www.insidemortgagefinance.com/articles/217636-fhava-lenders-raise-fico-credit-score-requirements* (on file).

''adverse market fee'' of 50 basis points on most refinances became effective for new originations delivered to the GSEs on or after December 1, 2020, to cover projected losses due to forbearances, the foreclosure moratoria, and other default servicing expenses.[48] However, due to refinance origination profits resulting from historically low interest rates, the leveling off in forbearance rates, and actions taken at the Federal level to alleviate servicer liquidity pressure,[49] concerns over non-bank liquidity and related credit overlays have eased, although Federal regulators continue to monitor the situation.[50] Nonetheless, access to credit for higher-risk but creditworthy consumers remains an ongoing concern given continued uncertainty over the impact of the expiration of foreclosure moratoria and COVID–19 forbearance plans on the mortgage market as well as creditor capacity constraints due to strong refinance demand.[51]

III. Legal Authority

The Bureau is issuing this final rule to amend Regulation Z pursuant to its authority under TILA and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board. The Dodd-Frank Act defines the term ''consumer financial protection function'' to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [52] Title X of the Dodd-Frank Act (including section 1061), along with TILA and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[53]

A. TILA

TILA section 105(a). Section 105(a) of TILA directs the Bureau to prescribe regulations to carry out the purposes of TILA and states that such regulations may contain such additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[54] A purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' [55] Additionally, a purpose of TILA sections 129B and 129C is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.[56] The Bureau is issuing this final rule pursuant to its rulemaking, adjustment, and exception authority under TILA section 105(a).

TILA section 129C(b)(2)(A). TILA section 129C(b)(2)(A)(vi) provides the Bureau with authority to establish guidelines or regulations relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Bureau may determine relevant and consistent with the purposes described in TILA section 129C(b)(3)(B)(i).[57] The Bureau is issuing this final rule pursuant to its authority under TILA section 129C(b)(2)(A)(vi).

TILA section 129C(b)(3)(A), (B)(i). TILA section 129C(b)(3)(B)(i) authorizes the Bureau to prescribe regulations that revise, add to, or subtract from the criteria that define a QM upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C; or are necessary and appropriate to effectuate the purposes of TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.[58] In addition, TILA section 129C(b)(3)(A) directs the Bureau to prescribe regulations to carry out the purposes of section 129C.[59] The Bureau is issuing this final rule pursuant to its authority under TILA section 129C(b)(3)(B)(i).

B. Dodd-Frank Act

Dodd-Frank Act section 1022(b). Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.[60] TILA and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of TILA and title X and prevent evasion of those laws.

IV. Section-by-Section Analysis

1026.43 Minimum Standards for Transactions Secured by a Dwelling

The General QM Final Rule established a March 1, 2021 effective date and a July 1, 2021 mandatory compliance date. Comment 43–2 explains that, for transactions for which a creditor received the consumer's application on or after March 1, 2021, but prior to July 1, 2021, creditors seeking to originate General QMs have the option of complying with either the revised, price-based General QM loan definition or the original, DTI-based General QM loan definition. This comment also explains that, for

[48] Press Release, Fed. Hous. Fin. Agency, *Adverse Market Refinance Fee Implementation now December 1* (Aug. 25, 2020), *https://www.fhfa.gov/Media/PublicAffairs/Pages/Adverse-Market-Refinance-Fee-Implementation-Now-December-1.aspx*.

[49] On April 10, 2020, Ginnie Mae released guidance on a Pass-Through Assistance Program whereby Ginnie Mae will provide financial assistance at a fixed interest rate to servicers facing a principal and interest shortfall as a last resort. Ginnie Mae, *All Participant Memorandum (APM) 20–03: Availability of Pass-Through Assistance Program for Participants in Ginnie Mae's Single-Family MBS Program* (Apr. 10, 2020), *https://www.ginniemae.gov/issuers/program_guidelines/Pages/mbsguideapmslibdisppage.aspx?ParamID=105.* On April 7, 2020, Ginnie Mae also announced approval of a servicing advance financing facility, whereby mortgage servicing rights are securitized and sold to private investors. Press Release, Ginnie Mae, *Ginnie Mae approves private market servicer liquidity facility* (Apr. 7, 2020), *https://www.ginniemae.gov/newsroom/Pages/PressReleaseDispPage.aspx?ParamID=194.*

[50] Fin. Stability Oversight Council, U.S. Dep't of the Treasury, *2020 Annual Report,* at 169 (2020), *https://home.treasury.gov/system/files/261/FSOC2020AnnualReport.pdf.*

[51] Nat'l Mortg. News, *Opinion: The originations feast and credit famine* (Oct. 4, 2020), *https://www.nationalmortgagenews.com/opinion/the-originations-feast-and-credit-availability-famine* (on file). This final rule is separate from the Bureau's pending proposal to amend certain provisions of Regulation X to assist borrowers affected by the COVID–19 pandemic, which was published in the **Federal Register** on April 9, 2021. Because the purpose of this final rule complements the purpose of the Bureau's pending proposal, the Bureau believes that it is appropriate to finalize this rule regardless of how it proceeds with the its pending proposal.

[52] 12 U.S.C. 5581(a)(1)(A).

[53] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act), Dodd-Frank Act section 1002(12)(O), 12 U.S.C. 5481(12)(O) (defining ''enumerated consumer laws'' to include TILA).

[54] 15 U.S.C. 1604(a).

[55] 15 U.S.C. 1601(a).

[56] 15 U.S.C. 1639b(a)(2).

[57] 15 U.S.C. 1639c(b)(2)(A).

[58] 15 U.S.C. 1639c(b)(3)(B)(i).

[59] 15 U.S.C. 1639c(b)(3)(A).

[60] 12 U.S.C. 5512(b)(1).

transactions for which a creditor received the consumer's application on or after July 1, 2021, creditors seeking to originate General QMs must use the revised, price-based General QM loan definition.

Additionally, under the Patch Extension Final Rule, the Temporary GSE QM loan definition expires upon the earlier of the General QM Final Rule's mandatory compliance date or the date the applicable GSE ceases to operate under conservatorship. Therefore, under the mandatory compliance date established by the General QM Final Rule, creditors seeking to originate QMs had the additional option of complying with the Temporary GSE QM loan definition, but only if the application for the covered transaction was received before either July 1, 2021, or the date the applicable GSE ceased to operate under conservatorship, whichever came first.

This final rule delays the General QM Final Rule's mandatory compliance date from July 1, 2021 to October 1, 2022, as the Bureau proposed. Specifically, the final rule amends comments 43–2 and 43(e)(4)–2 and –3 to reflect a delay of the mandatory compliance date by changing the date ''July 1, 2021'' where it appears in those comments to ''October 1, 2022.'' The Bureau is also adding comment 43(e)(2)–1 to clarify that both the original, DTI-based General QM loan definition and the revised, price-based General QM loan definition are available to creditors for transactions for which a creditor received an application on or after March 1, 2021, but prior to October 1, 2022. The specific amendments to the commentary are the same as the amendments the Bureau proposed. The Bureau is also correcting a typographical error in comment 43(e)(4)–2 by replacing ''thorough'' with ''through.''

With these changes, creditors seeking to originate General QMs will have the option of complying with either the revised, price-based General QM loan definition or the original, DTI-based General QM loan definition for transactions for which a creditor received the consumer's application on or after March 1, 2021, but prior to October 1, 2022. For transactions for which a creditor received the consumer's application on or after October 1, 2022, creditors seeking to originate General QMs will have to use the revised, price-based General QM loan definition. Additionally—because the Temporary GSE QM loan definition expires on the mandatory compliance date of the General QM Final Rule or the date the applicable GSE ceases to operate under conservatorship, whichever comes first—creditors seeking to originate QMs will have the additional option of complying with the Temporary GSE QM loan definition, if the application for the covered transaction was received before either October 1, 2022, or the date the applicable GSE ceases to operate under conservatorship, whichever comes first. The Bureau recognizes that the practical availability of the Temporary GSE QM loan definition may be affected by policies or agreements created by parties other than the Bureau, such as the Preferred Stock Purchase Agreements (PSPAs), which include restrictions on GSE purchases that rely on the Temporary GSE QM loan definition after July 1, 2021.[61]

Reasons for Delaying the Mandatory Compliance Date to October 1, 2022

The Bureau is issuing this final rule because it has concluded that maintaining the July 1, 2021 mandatory compliance date may leave some struggling homeowners with fewer options by reducing the flexibility of creditors to respond to the effects of the pandemic. In the Patch Extension Final Rule and the General QM Final Rule, the Bureau noted the disruptive effects of the pandemic on the mortgage market but nevertheless concluded that these effects did not justify the adoption of a mandatory compliance date later than July 1, 2021. Upon further evaluation, the Bureau has concluded that it may not have given sufficient weight to the potential risk that mandating the transition to the price-based approach in the revised General QM loan definition on July 1, 2021 could restrict options for consumers struggling with the disruptive effects of the pandemic. The Bureau has concluded that preserving flexibility to respond to the effects of the pandemic, by delaying the mandatory compliance date until October 1, 2022, outweighs concerns that a delay of the mandatory compliance date could stifle the development of private-sector approaches to underwriting or a rebound of the non-GSE private market in the near term.

The Bureau also concludes that the adverse impact of the pandemic on mortgage markets may persist longer than anticipated at the time of publication of the General QM Final Rule. In particular, as discussed in more detail below, with the extension of certain forbearance programs and foreclosure moratoria, the Bureau has concluded that the potential for disruption in the mortgage market will persist well past July 2021.

The Bureau notes that this rulemaking does not reconsider the revised, price-based General QM loan definition that was adopted in the General QM Final Rule. This definition went into effect on March 1, 2021, and creditors have the option of using it to originate QMs. Rather, this final rule concludes that it would be appropriate in light of the continuing disruptive effects of the pandemic to help facilitate greater creditor flexibility and expanded availability of responsible, affordable credit options for some struggling consumers by also providing QM status to loans originated under the original, DTI-based General QM loan definition and, potentially, under the Temporary GSE QM loan definition until October 1, 2022.

The Bureau is issuing this final rule due to concerns that requiring creditors seeking to make QM loans to shift to the revised, price-based General QM loan definition could reduce access to credit, particularly for certain consumer segments. As discussed in detail in part IV of the proposal, the Bureau has two concerns related to access to responsible, affordable mortgage credit.

First, as discussed in the proposal, the Bureau believes that ongoing regulatory interventions to assist consumers who may have suffered an income disruption related to the pandemic—such as COVID–19 forbearance plans and foreclosure moratoria—and potential disruptions in the market when those interventions expire warrant a delay of the mandatory compliance date.[62] The Bureau is concerned that the impact of the eventual expiration of foreclosure moratoria and COVID–19 forbearance plans described in part II.D above has the potential to lead to additional disruptions in the mortgage markets. The Bureau has concluded that it may not have given sufficient weight to these issues in mandating that creditors comply with the price-based approach on July 1, 2021. In addition, the Bureau has concluded that the extension of certain forbearance programs and foreclosure moratoria may result in these effects continuing longer than the Bureau anticipated at the time of the General QM Final Rule, and the Bureau

[61] On January 14, 2021, the U.S. Department of the Treasury and FHFA amended the terms of the PSPAs for Fannie Mae and Freddie Mac. Section 5.14(c) was added to the agreement and limits the GSEs' acquisition of certain loans on or after July 1, 2021, including loans that are not qualified mortgages as defined by 12 CFR 1026.43(e)(2), (5), (6), (7) or (f) with certain exceptions. *See* Letter of Treasury Secretary Steven T. Mnuchin to FHFA Director Mark Calabria (Jan. 14, 2021), *https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Fannie-Mae.pdf*.

[62] 86 FR 12839, 12848–50 (Mar. 5, 2021).

concludes that delaying the mandatory compliance date of the General QM Final Rule to October 1, 2022 will provide additional flexibility to creditors originating QM loans.

Second, as discussed in the proposal, the Bureau has concerns about mortgage credit availability for some creditworthy consumers who would qualify for a mortgage but for the disruptive market effects of the pandemic, and believes that such concerns warrant a delay of the mandatory compliance date.[63] The Bureau seeks to avoid a reduction in credit access for certain consumers who have been unable to purchase or refinance due to the effects of the pandemic on the origination market. As described in the proposal, the Bureau is concerned that, despite the record origination volumes, access to low interest-rate refinances and purchase mortgages in these unique circumstances may be less widely available for consumers with weaker credit relative to consumers with stronger credit in part due to creditor capacity constraints as opposed to the standard risk-based pricing adjustments that creditors typically charge. The Bureau is finalizing this proposal because it is concerned that requiring creditors to transition to the revised, price-based General QM loan definition on July 1, 2021—and eliminating the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition at that time—will exacerbate these credit-access concerns.

For the reasons described above, the Bureau is finalizing the proposed revisions to the commentary. The mandatory compliance date for the General QM Final Rule is October 1, 2022. For covered transactions for which creditors receive an application on or after the March 1, 2021 effective date and before the October 1, 2022 mandatory compliance date, creditors have the option of complying with either the revised, price-based General QM loan definition or the original, DTI-based General QM loan definition. Additionally—because the Temporary GSE QM loan definition expires on the mandatory compliance date of the General QM Final Rule or the date the applicable GSE ceases to operate under conservatorship, whichever comes first—creditors seeking to originate QMs will have the additional option of complying with the Temporary GSE QM loan definition, if the application for the covered transaction was received before either October 1, 2022 or the date the applicable GSE ceases to operate under conservatorship, whichever comes first.[64] This final rule will be effective on June 30, 2021.

Comments and Responses

The Bureau received 24 unique comments on the proposal. The Bureau summarizes and responds to these comments below.

Comments on the Bureau's reasons for delaying the compliance date. The Bureau received many comments on the reasons that it described in the proposal for delaying the mandatory compliance date, which are related to the impact of the COVID–19 pandemic on the mortgage market. Commenters varied in their views as to whether delaying the mandatory compliance date would have the desired effect of mitigating the pandemic-related disruptions identified in the proposal.

Nearly all commenters agreed with the Bureau's concerns that pandemic-related disruptions have significantly impacted the mortgage market, and several commenters agreed that delaying the mandatory compliance date to October 1, 2022 would help ensure access to responsible, affordable mortgage credit and preserve flexibility for consumers affected by the COVID–19 pandemic and its economic effects, as the Bureau stated in the proposal. One industry commenter stated that the proposed delay of the mandatory compliance date would prove especially helpful to small institutions such as community banks in providing access to credit, as they may not be ready to comply with the revised, price-based General QM loan definition by July 1, 2021. This commenter also stated that the Temporary GSE QM loan definition, in particular, has played an important role in providing access to credit for minority, younger, millennial, non-W–2, and low-income consumers. Another industry commenter suggested that the Bureau delay the mandatory compliance date for as long as possible. The commenter recommended that, if the Bureau delays the mandatory compliance date to October 1, 2022, the Bureau set up a future review to ensure the sufficiency of that date.

Another industry commenter stated that the additional flexibility afforded to credit unions by a delay of the mandatory compliance date will assist consumers who may not have otherwise been able to obtain a mortgage under the revised, price-based General QM loan definition due to the current lending environment and impacts of the pandemic. This commenter stated that it agreed with the Bureau that delaying the mandatory compliance date would disincentivize the mispricing of loans for higher-risk borrowers that the comment stated is occurring as a result of pandemic-related market conditions, such as the high volume of mortgage originations as the proposal discussed.

A coalition of consumer advocates stated that delaying the mandatory compliance date would give creditors the flexibility to provide credit and allow servicers to focus on assisting consumers with post-forbearance options. The commenter stated that, with relatively high unemployment rates and 2.5 million consumers in active forbearance plans, the industry and the Bureau should remain focused on resolving forbearance plans to minimize unnecessary foreclosures. The commenters added that, given the resources necessary to move these borrowers into a post-forbearance accommodation, allowing the continued use of multiple QM definitions will mitigate the extent to which disruptions in the servicing market affect the origination market. An industry commenter stated that servicers are currently focused on assisting the unprecedented number of borrowers exiting forbearance, noting that the reperformance of loans currently in forbearance is of critical importance to overall market stability. This commenter also stated that the current economic conditions do not create an environment conducive to the implementation of major regulatory changes. These commenters and another industry commenter stated generally that the flexibility afforded to creditors by keeping multiple QM definitions available is warranted given the uncertain trajectory of the United States' economic recovery from the pandemic.

One industry commenter stated that recent market trends related to the pandemic necessitate additional time for implementation beyond the time that is typically needed. Specifically, the commenter stated that the early-2021 increase in mortgage interest rates may cause a decline in profits as creditors are required to simultaneously implement many post-forbearance loss mitigation and resolution requirements as forbearance plans come to an end. This commenter also stated that the GSEs are preparing to implement new capital standards that are estimated to increase mortgage rates and that the Bureau should study the impact on pricing, consumers, and the market as

[63] *Id.* at 12850–53.

[64] As noted above, however, the availability of the Temporary GSE QM loan definition may be affected by policies or agreements created by parties other than the Bureau, such as the PSPAs, which include restrictions on GSE purchases that rely on the Temporary GSE loan QM definition after July 1, 2021. *See supra* note 61 and accompanying text.

well as allow creditors time to adapt to the multiple challenges presented.

Many commenters opposed the Bureau's proposal to delay the mandatory compliance date and stated that the proposed delay would not result in the credit-access benefits cited by the Bureau. Several industry commenters stated that loans that obtain QM status through the revised, price-based General QM loan definition overlap significantly with loans that obtained QM status through the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition. They stated that, as a result, the impact on access to credit of delaying the mandatory compliance date would be minimal at best. While these commenters acknowledged the economic stress the pandemic has placed on the industry and on consumers, they argued that the Bureau has not identified a sufficient basis to conclude that delaying the mandatory compliance date would mitigate these disruptions. These commenters asserted that the proposal did not provide data or analysis demonstrating the need for the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition for an extended period of time, given the expansive nature of the revised, price-based General QM loan definition. These commenters also stated that recent purchase restrictions in the PSPAs for Fannie Mae and Freddie Mac will limit the effects of a delay of the mandatory compliance date, as discussed further below. A coalition comprised primarily of consumer advocates stated that despite their belief that extending the Temporary GSE QM loan definition through an extension of the mandatory compliance date is not necessary, they also believe that such an extension will do no harm.

Several industry commenters asserted that the Bureau failed to identify a clear nexus between the consumers who would be affected by the pandemic and those who could specifically benefit from the original, DTI-based General QM loan definition. One commenter stated that few loans with DTI ratios below 43 percent would be priced with an interest rate spread more than 2.25 percentage points above APOR. This commenter also stated that the burden of complying with appendix Q can have an adverse impact on access to credit. This commenter also stated that borrowers most likely to have been impacted by the pandemic include those who suffered an income disruption or increased debt loads, and that the Bureau had not explained how those particular borrowers are likely to benefit from the original, DTI-based General QM loan definition, which requires substantial income documentation.

While no commenters disputed that the pandemic has disrupted the mortgage industry, some commenters disagreed with the Bureau's explanations of how delaying the mandatory compliance date would address the two types of market problems it identified in the proposal. With regard to the first issue identified in the proposal—the upcoming expiration of forbearance plans and foreclosure moratoria—one industry commenter stated that the GSEs and government agencies are offering streamlined post-forbearance loss mitigation options that should assist families in keeping their homes and that high levels of home equity should make it possible for many consumers who seek to sell their homes to do so, which would mitigate the need for a delay in the mandatory compliance date. Another industry commenter stated that delaying the mandatory compliance date is unlikely to materially increase access to credit and also noted that the supply of available homes falls far short of purchaser demand, and therefore they expect no shortage of qualified borrowers.

With regard to the second issue identified in the proposal relating to access to credit—the availability of mortgage credit for some creditworthy consumers who would qualify for a mortgage but for the disruptive market effects of the pandemic—one commenter acknowledged the supporting data the Bureau put forward in the proposal but noted the proposal lacked quantitative data specifically related to creditor capacity constraints and credit overlays. This commenter reiterated that even if these capacity constraints and overlays are substantiated, the Bureau has not provided evidence that a delay of the mandatory compliance date would mitigate these identified concerns. A separate industry commenter stated that industry-wide adoption of the revised, price-based General QM loan definition may actually make the market more efficient, alleviating some of the pandemic-related capacity constraints that some creditors are facing and that the Bureau identified in the proposed rule. This commenter asserted that the revised, price-based General QM loan definition should provide ample access to credit for creditworthy consumers during the pandemic recovery.

Many industry and consumer advocate commenters addressed the impact of recent amendments to the PSPAs on the proposed rationale for delaying the mandatory compliance date. Commenters stated that these amendments may prevent the GSEs from purchasing loans based on the Temporary GSE QM loan definition after July 1, 2021, and therefore may significantly limit the impact of the mandatory compliance date delay, absent revisions to the agreements.[65]

Many industry and consumer advocate commenters that supported delaying the mandatory compliance date suggested that the Bureau also advocate for a change to the PSPAs that would allow for the purchase of Temporary GSE QM loans during the proposed delay of the mandatory compliance date. They stated that loans originated under the Temporary GSE QM loan definition are crucial to maintaining market stability and access to credit for certain segments of the market, such as minorities and low- to moderate-income consumers. One industry commenter suggested that credit unions, in particular, rely on the Temporary GSE QM loan definition to lend in their communities and stated that their internal industry survey data suggest that 61 percent of their outstanding mortgages qualified to be sold to the GSEs and that 19 percent of survey respondents indicated that the expiration of the Temporary GSE QM loan definition would have a material impact on their credit union.[66]

Several industry commenters that opposed delaying the mandatory compliance date stated that certain ways in which the Bureau stated the delay would address market disruptions, such as by providing the GSEs with the flexibility to tailor programs to meet challenges specific to the COVID–19 pandemic, may be thwarted by restrictions on Temporary GSE QM loans in the PSPAs. Moreover, they stated that the existing language in the PSPAs would not constrict access to credit, as most loans covered by the Temporary GSE QM loan definition would also be covered by the revised, price-based General QM loan definition. One industry commenter also argued that a delay in the mandatory compliance date would not provide additional implementation time because, in light of the PSPAs, creditors

[65] On January 14, 2021, the U.S. Department of the Treasury and FHFA amended the terms of the PSPAs for Fannie Mae and Freddie Mac. Section 5.14(c) was added to the agreement and limits the GSEs' acquisition of certain loans on or after July 1, 2021, including loans that are not qualified mortgages as defined by 12 CFR 1026.43(e)(2), (5), (6), (7) or (f) with certain exceptions.

[66] The comment did not provide a copy of or citation to the survey described.

would likely need to comply with the revised, price-based General QM loan definition in order to sell their loans to the GSEs as of July 1, 2021.

A few industry commenters noted that additional provisions were included in the PSPAs that restrict access to credit such as certain limitations on the purchases of second homes, investor properties, and higher-risk single-family loans. Specifically, these commenters cited the PSPA limitation on the acquisitions of loans with two out of three high-risk characteristics, defined as a loan-to-value ratio (LTV) of 90 percent or greater, a DTI of 45 percent or greater, and a credit score of 680 or less. These commenters were concerned that such limitations would impair access to credit and noted that a quick implementation of the revised, price-based General QM loan definition may mitigate some of these impacts.

Response. The Bureau is finalizing the proposed rule to delay the mandatory compliance date until October 1, 2022 because it has concluded that delaying the mandatory compliance date until that date will help ensure access to responsible, affordable mortgage credit and will help preserve flexibility for consumers affected by the COVID–19 pandemic and its economic effects. While the Bureau acknowledges that future access-to-credit impacts of this delay are subject to uncertainty, providing additional options to originate loans with multiple pathways to QM status will increase flexibility for creditors and secondary market participants to serve emerging market needs and will help increase access to mortgage credit for consumers during a period of significant economic stress. With respect to the commenter recommendation to set up a future review of the delayed mandatory compliance date, the Bureau will continue to monitor for any unanticipated effects of the COVID–19 pandemic on market conditions to determine if future changes are warranted.

The Bureau has concluded that delaying the mandatory compliance date will expand access to credit and allow industry participants to focus on offering struggling consumers post-forbearance options. No commenters disputed the disruptive impact of the pandemic on the mortgage industry. In the proposed rule, the Bureau focused its analysis on the impact of expanded access to credit on facilitating interest rate-reducing refinances as well as allowing creditworthy purchasers to absorb some of the distressed properties that may enter the market due to the inability of the seller to maintain a post-forbearance payment. But as noted above, several industry and consumer advocate commenters stated that allowing creditors more time to implement the revised, price-based General QM loan definition will allow servicers to focus their efforts on keeping struggling consumers in their homes, which will likely reduce the number of distressed properties that enter the market. The Bureau determines that this rationale provided by commenters is an additional, although not necessary, reason to delay the mandatory compliance date to October 1, 2022. The Bureau has concluded that, given the significant uncertainty in the mortgage market with regard to the effects of forbearance plans and foreclosure moratoria expiring, delaying the mandatory compliance date will provide both servicers and creditors with the flexibility to use multiple QM definitions and reallocate resources between origination and servicing departments to best assist consumers. The Bureau believes this may reduce some operational capacity constraints in the servicing market, although the Bureau expects servicer operational capacity constraints to continue at least through the end of this year.

The Bureau further concludes that the pandemic has had the effect of restricting access to credit for higher-risk, yet creditworthy consumers and that delaying the mandatory compliance date may ease these credit-access concerns by providing multiple pathways to QM status. The Bureau notes that, with the exception of one industry commenter,[67] commenters did not question the Bureau's findings that access to credit has been constrained for higher-risk, yet creditworthy borrowers due to creditor capacity limitations and creditor precautions intended to ensure that new originations are less likely to request a COVID–19 forbearance in the future. Several industry commenters agreed with the proposal's analysis of this issue. The Bureau acknowledges that, given the continually evolving nature of both the pandemic's impact on the mortgage market and responses by regulators, there is uncertainty as to the extent to which delaying the mandatory compliance date will increase access to credit. However, the Bureau concludes that, to some extent, the additional flexibility provided by this final rule will increase—rather than decrease—access to credit.

Moreover, the Bureau is concerned that temporarily, non-agency market constraints created by the pandemic could make it more difficult for some creditworthy borrowers with the ability to repay mortgage loans that currently qualify for QM status under the original, DTI-based General QM loan definition to obtain such loans if those loans no longer qualify for QM status based on the revised, price-based General QM loan definition. For example, as discussed in the section 1022(b) analysis in part V, of the 33,000 additional consumers expected to obtain conventional QM loans priced 2.25 percentage points or higher above APOR due to this rule, 28,000 are expected to obtain QM status through the original, DTI-based General QM loan definition. The Bureau estimates that the continued availability of the original, DTI-based General QM loan definition and, potentially, the Temporary GSE QM loan definition each separately provide beneficial access to credit under this final rule. As a result, even if the PSPAs continue to restrict GSE purchases that rely on the Temporary GSE loan QM definition after July 1, 2021, as some commenters noted, the Bureau concludes that the final rule will increase access to mortgage credit relative to the current rule under which the original, DTI-based General QM loan definition would no longer be available starting July 1, 2021. The benefits from leaving the Temporary GSE QM loan definition in place until October 1, 2022 and the benefits from creditors using the original, DTI-based General QM loan definition during that period are, in the Bureau's view, each independently sufficient reasons for delaying the mandatory compliance date.

As the proposal stated, while the Bureau acknowledges that policies, agreements, or legislation created by parties other than the Bureau—including the PSPAs—may limit the impact of the mandatory compliance date delay, the Bureau is unable to predict how such agreements or restrictions might change in the future. The Bureau also notes that sections 5.14(c)(iii)–(vi) of the letter agreements amending the PSPAs appear to provide FHFA with the authority to allow the GSEs to purchase certain loans that do not comply with the QM definitions listed in section 5.14(c)(i).[68] These include loans secured by investment

[67] This industry commenter did not challenge the Bureau's findings that access to credit has been restricted for higher-risk consumers, but asserted that the Bureau did not provide quantitative data in support of creditor capacity constraints.

[68] Section 5.14(c)(i) limits GSE loan purchases after July 1, 2021 to loans that satisfy the General QM loan definition, Small Creditor QM loan definition, Seasoned QM loan definition, or Balloon Payment QM loan definition.

properties, high-LTV streamlined refinances, and single family loans secured by manufactured housing. The letter agreements also appear to provide broad authority for FHFA and the GSEs to establish temporary underwriting flexibilities during times of exigent circumstances. While the agreement appears to provide FHFA discretion to determine whether it will allow the GSEs to exercise these additional purchase flexibilities, issuing this final rule to delay the mandatory compliance date will confer QM status to these loans if FHFA decides it is necessary to exercise this authority. QM status may prove valuable in the future given the uncertain market outlook as a result of the COVID–19 pandemic. Absent this final rule, if FHFA and the GSEs exercised this authority, it would permit the GSEs to purchase certain non-QM loans. The Temporary GSE QM loan definition confers QM status on loans eligible for sale to the GSEs. Therefore, finalizing this rule will allow FHFA to exercise this authority for the GSEs and other secondary market participants to instead purchase these loans with QM status, which may increase access to credit through lower pricing and greater secondary market liquidity.

Comments on uncertainty about the General QM loan definition. Several industry commenters stated that the proposal has created uncertainty with respect to whether the Bureau will permit the revised, price-based General QM loan definition to remain in effect. For example, several industry commenters stated that the Bureau's primary purpose in delaying the mandatory compliance date is to facilitate reconsideration of the General QM loan definition. Several commenters stated that the Bureau's February 23, 2021 Statement [69] has contributed to this uncertainty.

Commenters also stated that this uncertainty may deter creditors and vendors from continuing to invest in the resources and training necessary to implement the revised, price-based General QM loan definition. One commenter stated that this uncertainty will likely result in market participants experiencing compliance challenges that may divert resources away from other needs, in particular from responding to borrower requests for assistance due to hardships experienced under the COVID–19 pandemic, until there is assurance that the Bureau will permit the revised, price-based General QM loan definition to remain in effect. Industry commenters also asserted that delays in implementing the price-based approach could negatively affect access to credit; for example, they suggested that it could inhibit innovative underwriting approaches that, in the view of these commenters, would benefit minority borrowers in particular.

Response. The Bureau understands that some industry uncertainty has resulted from the Bureau's Statement providing transparency about its plans to consider at a later date whether to reconsider other aspects of the General QM Final Rule, as well as from the Bureau's reiteration in the proposal of the applicable language from the Statement. However, this final rule concerns the delay of the mandatory compliance date from July 1, 2021 to October 1, 2022. Commenters did not explain why delaying the mandatory compliance date to October 1, 2022, in and of itself, would meaningfully increase uncertainty in the market about whether the Bureau will reconsider other aspects of the General QM Final Rule, and the Bureau does not believe that delaying the mandatory compliance date to October 1, 2022 would have this effect.

The Bureau also notes that, while many industry commenters stated that uncertainty about potential reconsideration of the revised, price-based General QM loan definition will deter creditors from implementing the revised General QM loan definition (and therefore mitigate benefits from that final rule), commenters did not identify examples of this occurring in the market. In contrast, the Bureau understands that several larger creditors have already implemented the revised, priced-based General QM loan definition and announced new products that are underwritten in accordance with the revised definition that went into effect on March 1, 2021.[70] Even if uncertainty results in some creditors choosing to delay implementation of the revised, price-based General QM loan definition, and even if that result could be attributed to the rule, the Bureau concludes that such delays are unlikely to result in significant limitations on access to responsible, affordable mortgage credit under the price-based approach and do not outweigh the potential credit-access benefits of delaying the mandatory compliance date.

Comments on general implementation issues. Several industry commenters stated that they supported the Bureau's proposal to delay the mandatory compliance date because the delay would give them more time to prepare to comply with the revised, priced-based General QM loan definition. In contrast, one industry commenter stated that delaying the mandatory compliance date would disrupt market participants' efforts to bring their systems into compliance with the price-based approach and cause market participants to incur additional compliance-related costs for training, Loan Origination System adjustments, secondary market integrations, and amendments to policies and procedures. Other industry commenters stated that delaying the mandatory compliance date was not necessary because many creditors have already implemented the price-based approach and several others have made preparations to implement it by the original mandatory compliance date of July 1, 2021. One commenter stated that creditors and vendors have slowed or paused implementation efforts in anticipation of the Bureau's decision to delay the mandatory compliance date and urged the Bureau to issue a final rule to restore certainty to the market and allow all market participants time to adapt. One industry commenter requested that the Bureau clarify whether creditors may use either the original, DTI-based General QM loan definition or the revised, price-based General QM loan definition on a loan-by-loan basis prior to the mandatory compliance date, or whether they must use one definition or the other for all their loans.

Response. Regarding the comment that delaying the mandatory compliance date would disrupt market participants' efforts to bring their systems into compliance with the price-based approach and impose additional compliance-related costs, the Bureau notes that, with or without this final rule, creditors that wish to originate General QM loans must implement the revised, price-based General QM loan definition before October 1, 2022 and thus face the same compliance requirements. In addition, the Bureau reiterates that the purpose of this final rule is to preserve flexibility by allowing creditors to continue to use the original, DTI-based General QM loan definition and the Temporary GSE QM loan definition until October 1, 2022. Accordingly, creditors that wish to use the revised, price-based General QM loan definition exclusively by July 1, 2021, as was originally required under the General QM Final Rule, may still do so and avoid any additional compliance-related costs associated

[69] *See supra* part II.B.

[70] *See, e.g.,* Brandon Ivey, Some Non-Agency Lenders Embracing New QM Rule, Inside Mortg. Fin. (Mar. 26, 2021), *https://www.insidemortgagefinance.com/articles/220914-some-non-agency-lenders-embracing-cfpbs-qm-changes.*

with the flexibility provided by this final rule. As many commenters noted, delaying the compliance date will simply provide market participants with more time to bring their systems into compliance with the revised, price-based General QM loan definition.

With respect to the comment stating that delaying the mandatory compliance date is not necessary because many creditors have already implemented the revised, price-based General QM loan definition and several others are prepared to implement it by the original mandatory compliance date, the Bureau notes that these creditors will not be harmed by delaying the mandatory compliance date. Moreover, as discussed above under ''Comments on the Bureau's Reasons for Delaying the Mandatory Compliance Date,'' some commenters have reported that creditors have experienced challenges implementing the revised, price-based General QM loan definition because of resource constraints due to the recent forebearance plan and foreclosure moratoria extensions and the need to find sustainable post-forebearance alternatives to keep consumers in their homes. As noted above, the Bureau concludes that these challenges identified by these commenters provide an additional, although not necessary, reason for delaying the mandatory compliance date.

Regarding the comment asking the Bureau to clarify that the original, DTI-based General QM loan definition and the revised, priced-based General QM loan definition are available on a loan-by-loan basis, the Bureau notes that, as new comment 43(e)(2)–1 states, both the original, DTI-based General QM loan definition and the revised, price-based General QM loan definition are available to creditors for transactions for which the creditor receives an application on or after March 1, 2021, but prior to October 1, 2022.

Finally, the Bureau received many comments about the merits of the General QM loan definition and the Seasoned QM loan definition. The purpose of this rulemaking is not to address the merits of the General QM loan definition or the Seasoned QM loan definition. These comments are therefore outside the scope of this rulemaking. As the Bureau stated in the Statement and states in this final rule, the Bureau will consider at a later date whether to initiate a rulemaking to revisit others aspects of the General QM loan definition and the Seasoned QM loan definition.

V. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

As discussed above, this final rule will delay the mandatory compliance date of the General QM loan definition from July 1, 2021 to October 1, 2022. In developing this final rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act. Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. The Bureau consulted with the prudential regulators and other appropriate Federal agencies regarding the consistency of the final rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.

B. Data and Evidence

The discussion in this impact analysis relies on data from a range of sources. These include data collected or developed by the Bureau, including HMDA[71] data, as well as other publicly available sources. In particular, as indicated in the proposal, the data and evidence published in the Bureau's General QM Final Rule inform this analysis. Also as indicated in the proposal, the Bureau conducted an assessment of the ATR/QM Rule and published its ATR/QM Rule Assessment Report as required under section 1022(d) of the Dodd-Frank Act.[72] The Assessment Report provides quantitative and qualitative information on questions relevant to the final rule, including the effect of QM status relative to non-QM status on access to credit. Consultations with other regulatory agencies, industry, and research organizations inform the Bureau's impact analyses.

The data the Bureau relied upon provide detailed information on the number, characteristics, pricing, and performance of mortgage loans originated in recent years. While these data allow the Bureau to estimate the number of mortgage loans historically that would have satisfied the different QM definitions applicable under the baseline or the final rule, the Bureau cannot estimate with precision how consumers may respond to changes in the QM definitions by obtaining alternative loan products or how creditors may respond by changing loan pricing or product offerings.

The Bureau received several comments on the proposal's impact analysis. Two industry commenters stated that the Bureau provided insufficient explanation or support for its estimate that 33,000 additional consumers would obtain high-priced conventional QM loans due to the rule. As stated in the proposal's impact analysis, the Bureau relied on HMDA data and the evidence published in the Bureau's General QM Final Rule for its analysis. The Benefits to Consumers section of the proposal stated that between July 1, 2021 and October 1, 2022, approximately 33,000 additional consumers would obtain conventional QM loans priced 2.25 percentage points or higher above APOR under the final rule due to the availability of the original, DTI-based General QM loan definition and the Temporary GSE QM loan definition.

In addition, an industry commenter stated that the Bureau's 1022(b) analysis did not account for the effect of the GSE PSPAs when estimating the impacts of the rule. The proposal's impact analysis included a footnote estimating that if the GSEs do not purchase loans above the General QM Final Rule's pricing thresholds during the duration of the mandatory compliance date delay, approximately 28,000 additional consumers would obtain conventional QM loans priced 2.25 percentage points or higher above APOR under the proposal.[73] This estimate reflects possible impacts of the rule if the GSE PSPAs prevent the GSEs from purchasing loans above the pricing thresholds established in the General QM Final Rule.

Regarding potential compliance costs, as noted above, a trade association commented that delaying the mandatory compliance date would disrupt market

[71] HMDA requires many financial institutions to maintain, report, and publicly disclose loan-level information about mortgages. These data help show whether creditors are serving the housing needs of their communities; they give public officials information that helps them make decisions and policies; and they shed light on lending patterns that could be discriminatory. HMDA was originally enacted by Congress in 1975 and is implemented by Regulation C. *See* Bureau of Consumer Fin. Prot., *Mortgage Data* (*HMDA*), *https://www.consumerfinance.gov/data-research/hmda/.*

[72] Bureau of Consumer Fin. Prot., *Ability to Repay and Qualified Mortgage Assessment Report* (Jan. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf.*

[73] 86 FR 12839, 12855 n.98 (Mar. 5, 2021).

participants' efforts to bring their systems into compliance with the General QM Final Rule and cause market participants to incur additional compliance-related costs. However, as noted above, with or without this final rule, creditors that wish to originate General QM loans must implement the revised, price-based General QM loan definition before October 1, 2022 and thus face the same compliance requirements. The final rule benefits creditors by providing additional time to implement these requirements.

As discussed above, many industry commenters stated that uncertainty about potential reconsideration of the revised, price-based General QM loan definition will deter creditors from implementing the revised General QM loan definition (and therefore mitigate benefits from that final rule). However, commenters did not identify examples of this occurring in the market, which tends to reduce the credibility of this concern. Moreover, as discussed above, the Bureau understands that several larger creditors have already implemented the revised, priced-based General QM loan definition and announced new products that are underwritten in accordance with the revised definition.[74] And as already noted, the Bureau does not believe this final rule delaying the mandatory compliance date will meaningfully increase uncertainty in the market. Even if uncertainty results in some creditors choosing to delay implementation of the revised, price-based General QM loan definition, and even if that result could be attributed to the rule, the Bureau is not aware of any reason to believe that the effect would be large enough to result in significant limitations on access to responsible, affordable mortgage credit.

Finally, several industry, trade association, and consumer group commenters requested that the Bureau expand public access to the National Mortgage Database for market monitoring and research purposes. The Bureau acknowledges these comments but considers them to be outside the scope of this final rule.

C. Description of the Baseline

The Bureau considers the benefits, costs, and impacts of the final rule against the baseline in which the Bureau takes no action and compliance with the revised General QM loan definition becomes mandatory on July 1, 2021, when the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition expire and can no longer be used by creditors to obtain QM status on new mortgage loans. Under the final rule, the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition can continue to be used until October 1, 2022, the new mandatory compliance date of the revised General QM loan definition. As a result, the final rule's direct market impacts will occur only during the period between July 1, 2021 and October 1, 2022. The impact analyses assume the GSEs will remain in conservatorship for the duration of this period, and, therefore, that the conservatorship condition in the Temporary GSE QM loan definition will not trigger its expiration.

Under the baseline, when the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition expire on July 1, 2021, conventional loans could only receive QM status under the Bureau's rules by underwriting according to the revised General QM requirements, Small Creditor QM requirements, Balloon Payment QM requirements, the expanded portfolio QM amendments created by the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act,[75] or the Seasoned QM definition.[76] The revised General QM loan definition, which will be the only type of QM available at origination to all creditors following the mandatory compliance date, generally requires loans to be priced less than 2.25 percentage points above APOR.[77]

The Bureau anticipates that when the mandatory compliance date is reached, the main loans affected will be those priced 2.25 percentage points or higher above APOR that are either conventional loans with DTI ratios at or below 43 percent (Under-43-Percent-DTI conventional loans) or GSE-eligible loans. Retaining the July 1, 2021 mandatory compliance date would have affected these loans because they are currently originated as QM loans due to either the original, DTI-based General QM loan definition or the Temporary GSE QM loan definition but, absent changes in pricing, could not be originated as QM loans and may not be originated at all after the mandatory compliance date.

The Bureau's analysis of the market under the baseline focuses on loans priced 2.25 percentage points or higher above APOR that are either Under-43-Percent-DTI conventional loans or GSE-eligible loans because the Bureau estimates most loans newly obtaining QM status due to the final rule fall within those categories. A smaller number of GSE-eligible loans will not fall within the revised General QM loan definition because they do not satisfy the consider and verify requirements in the revised General QM loan definition. The Bureau lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of GSE-eligible loans that do not satisfy the consider and verify requirements in the revised General QM loan definition. These loans are largely restricted to certain streamlined refinance loans offered by the GSEs, and the Bureau estimates that in the current market such loans are considerably less numerous than Under-43-Percent-DTI conventional loans and GSE-eligible loans priced 2.25 percentage points or higher above APOR.[78] However, demand for such loans could increase if housing market conditions deteriorate.

D. Benefits and Costs to Covered Persons and Consumers

1. Benefits to Consumers

The primary benefit to consumers of the final rule is the availability of conventional QM loans priced 2.25 percentage points or higher above APOR—including both Under-43-Percent-DTI conventional loans and GSE-eligible loans—during the period from July 1, 2021 to October 1, 2022. The Bureau uses HMDA data to estimate the number of loans that would not have been QM under the baseline, but would have been QM under the final rule due to their eligibility for either the original,

[74] The Bureau does recognize that some creditors have experienced implementation challenges, as discussed above, from resource constraints due to the recent forebearance plan and foreclosure moratoria extensions and the need to find sustainable post-forebearance alternatives to keep consumers in their homes.

[75] Public Law 115–174, 132 Stat. 1296 (2018).

[76] Other than the mandatory compliance date delay implemented by this final rule, the Bureau's analysis assumes an otherwise identical market and policy environment under both the baseline and the final rule. As such, estimates under both the baseline and final rule assume the same effects of any separate policy proposals, including the Bureau's pending proposal to amend certain provisions of Regulation X to assist borrowers affected by the COVID–19 pandemic, which was published in the **Federal Register** on April 9, 2021. The Bureau notes in this respect that it expects any interactions of the pending proposal and this final rule to be both difficult to quantify and very limited relative to the direct effects of this final rule.

[77] The comparable thresholds are 6.5 percentage points over APOR for loans priced under $66,156, 3.5 percentage points over APOR for loans priced under $110,260 but at or above $66,156, and 6.5 percentage points over APOR for loans for manufactured housing priced under $110,260. 12 CFR 1026.43(e)(2)(vi)(A) through (D).

[78] As of Q4 2020, only 140 loans had been originated through the GSEs' High-LTV Refinance Option since the inception of the program. *See* FHFA Foreclosure Prevention and Refinance Report (Q4 2020), *https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/4Q2020FPR.pdf.*

DTI-based General QM loan definition or the Temporary GSE QM loan definition.[79] Relative to the baseline, the Bureau estimates that between July 1, 2021 and October 1, 2022, approximately 33,000 additional consumers will obtain conventional QM loans priced 2.25 percentage points or higher above APOR under the final rule due to the availability of the original, DTI-based General QM loan definition and the Temporary GSE QM loan definition.[80] While many of these consumers may have obtained mortgages of some kind under the baseline, the largest benefits to consumers accrue to the consumers who will obtain a conventional QM loan under the final rule but would not have obtained a mortgage under the baseline.

Under the baseline, some of these 33,000 consumers may have been able to obtain General QM loans priced below 2.25 percentage points over APOR due to creditor responses to the revised General QM loan definition or obtained QM loans under the Small Creditor QM definition. Others may instead have obtained FHA loans, likely paying higher total loan costs as discussed in the General QM Final Rule. Finally, a portion of these consumers may have obtained non-QM loans under the baseline, but the Bureau expects some consumers may not have been able to obtain a mortgage at all.

2. Benefits to Covered Persons

The final rule's primary benefit to covered persons, specifically mortgage creditors, is the continued profits from originating QM loans priced 2.25 percentage points or higher above APOR, particularly Under-43-Percent-DTI conventional loans and GSE-eligible loans. For the estimated 33,000 additional conventional QM loans priced 2.25 percentage points or higher above APOR under the final rule, the Bureau estimates an average loan size of $190,000 and thus a total loan volume of $6.3 billion. Under the baseline, after July 1, 2021, creditors would have been unable to originate such loans under the original, DTI-based General QM loan definition or the Temporary GSE QM loan definition and would instead have had to originate such loans as FHA, Small Creditor QM, or non-QM loans, or originate at a price at or below 2.25 percentage points over APOR as General QM loans. Creditors' current preference for originating QM loans priced 2.25 percentage points or more over APOR likely reflects advantages in a combination of costs or guarantee fees (particularly relative to FHA loans), liquidity (particularly relative to Small Creditor QM), or litigation and credit risk (particularly relative to non-QM). Moreover, QM loans are exempt from the Dodd-Frank Act risk retention requirement whereby creditors that securitize mortgage loans are required to retain at least 5 percent of the credit risk of the security, which adds significant cost. As a result, the final rule conveys benefits to mortgage creditors originating General QM and Temporary GSE QM loans on each of these dimensions.

Given creditors' preference for originating QM loans, the final rule may allow lenders to avoid price reductions on some loans that would have been necessary to satisfy the revised General QM loan definition under the baseline. This will increase revenue for creditors on such loans originated during the July 1, 2021 to October 1, 2022 period.

3. Costs to Consumers

For the duration of the July 1, 2021 to October 1, 2022 period, creditors that would have reduced prices on some loans to satisfy the revised General QM loan definition under the baseline may delay reducing loan prices under the final rule. This is likely to occur for some uncertain fraction of the estimated 33,000 additional conventional loans within the original, DTI-based General QM loan definition and the Temporary GSE QM loan definition. Consumers obtaining such loans will pay higher prices for these conventional QM loans relative to the baseline.

In addition, consumers who would have obtained non-QM loans under the baseline but instead obtain QM loans under the final rule forgo the benefit of retaining the ATR causes of action and defenses against foreclosure.

4. Costs to Covered Persons

The final rule will involve minimal costs to covered persons. The most sizable potential costs to covered persons are effectively transfers between creditors for the duration of the mandatory compliance date delay, reflecting temporarily reduced loan origination volume for creditors that primarily originate FHA or Under-43-Percent-DTI non-QM loans and temporarily increased origination volume for lenders who primarily originate Under-43-Percent-DTI conventional loans priced 2.25 percentage points or more over APOR.

5. Other Benefits and Costs

In delaying the expiration of the original, DTI-based General QM loan definition and the Temporary GSE QM loan definition, the final rule will delay any effects of the expiration on the development of the secondary market for private (non-GSE) mortgage loan securities. When the Temporary GSE QM loan definition expires, those loans that do not fit within the revised General QM loan definition represent a potential new market for private securitizations. Thus, the final rule will slightly reduce the scope of the potential non-QM market for the duration of the mandatory compliance date delay, likely lowering profits and revenues for participants in the private secondary market. This will effectively be a transfer from these private secondary market participants to participants in the agency secondary market.

E. Specific Impacts of the Final Rule

1. Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

The final rule's expected impact on depository institutions and credit unions that are also creditors making covered loans (depository creditors) with $10 billion or less in total assets is similar to the expected impact on larger creditors and non-depository creditors. Those smaller creditors originating portfolio loans can originate Small Creditor QM loans priced 2.25 percentage points or higher above APOR, and thus may rely less on the original, DTI-based General QM loan definition and the Temporary GSE QM loan definition for originating such loans. If the General QM Final Rule's mandatory compliance date will confer a competitive advantage to these small creditors in their origination of loans priced 2.25 percentage points or higher

[79] Specifically, among HMDA loans originated in 2018, the Bureau estimates that approximately 2,200 loans per month would have been QM under the original, DTI-based General QM loan definition or the Temporary GSE QM loan definition due to DTI ratios at or below 43 percent or purchase by a GSE, but would not have been QM under the revised, price-based General QM loan definition due to rate spreads over APOR exceeding the applicable price thresholds. Multiplying this estimate by the 15-month length of the mandatory compliance date delay yields the Bureau's total estimate of 33,000.

[80] This estimate assumes that the GSEs continue to originate loans priced 2.25 percentage points or higher above APOR between July 1, 2021 and October 1, 2022. If the GSEs do not originate loans above the General QM Final Rule's pricing thresholds during this period, the Bureau estimates that approximately 28,000 additional consumers would obtain conventional QM loans priced 2.25 percentage points or higher above APOR under the proposal. This estimate reflects possible impacts of the rule if the GSE PSPAs prevent the GSEs from purchasing loans above the pricing thresholds established in the General QM Final Rule.

above APOR, the final rule will delay this outcome.

2. Impact of the Proposed Provisions on Consumers in Rural Areas

The final rule's expected impact on consumers in rural areas is similar or slightly larger than the expected impact on non-rural areas. Based on 2018 HMDA data, the Bureau estimates that loans priced 2.25 percentage points or higher above APOR that are either Under-43-Percent-DTI conventional loans or GSE-eligible loans reflect a slightly larger share of the conventional loan market in rural areas (0.8 percent) relative to non-rural areas (0.6 percent).[81]

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA),[82] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[83] requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[84]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.[85] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[86]

In the proposal, the Bureau certified that an IRFA was not required because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau did not receive comments on its analysis of the impact of the proposal on small entities. The Bureau does not expect the final rule to impose costs on small entities relative to the baseline. Under the baseline, on July 1, 2021, the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition expire, and therefore no creditor—including small entities—would have been able to originate QM loans under either definition after that date. Under the final rule, small entities that would otherwise not have been able to originate QM loans under these definitions will be able to originate such loans with QM status until October 1, 2022. Thus, the Bureau anticipates that the final rule will only reduce burden on small entities relative to the baseline.

Accordingly, the Acting Director certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[87] Federal agencies are generally required to seek, prior to implementation, approval from the Office of Management and Budget (OMB) for information collection requirements. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

The final rule will amend 12 CFR part 1026 (Regulation Z), which implements TILA. OMB control number 3170–0015 is the Bureau's OMB control number for Regulation Z. The Bureau has determined that this final rule does not contain any new or substantively revised information collection requirements other than those previously approved by OMB under that OMB control number 3170–0015.

VIII. Congressional Review Act

Pursuant to the Congressional Review Act,[88] the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States at least 60 days prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as a ''major rule'' as defined by 5 U.S.C. 804(2).

IX. Signing Authority

The Acting Director of the Bureau, David Uejio, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 2. In supplement I to part 1026:
■ a. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling,* revise introductory paragraph 2;
■ b. Under section *43(e)(2) Qualified mortgage defined—general,* add paragraph 1; and
■ c. Revise section *43(e)(4) Qualified mortgage defined—other agencies.*

The revisions and addition read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

2. *General QM Amendments Effective on March 1, 2021.* The Bureau's revisions to Regulation Z contained in Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition published on December 29, 2020 (2021 General QM Amendments) apply with respect to transactions for which a creditor received an application on or after March 1, 2021 (effective date). Compliance with the 2021 General QM Amendments is mandatory with respect to transactions for which a creditor received an application on or after October 1, 2022 (mandatory compliance date). For a given transaction for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022, a person has the option of complying either: With 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as it was in effect on February 26, 2021, together with any amendments to 12 CFR part 1026 that become effective after February 26, 2021, other than the 2021 General QM Amendments. For transactions subject to

[81] These statistics are estimated based on originations from the first nine months of the year, to allow time for loans to be sold before HMDA reporting deadlines.

[82] 5 U.S.C. 601 *et seq.*

[83] Public Law 104–121, tit. II, 110 Stat. 857 (1996).

[84] 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

[85] 5 U.S.C. 603 through 605.

[86] 5 U.S.C. 609.

[87] 44 U.S.C. 3501 *et seq.*

[88] 5 U.S.C. 801 *et seq.*

§ 1026.19(e), (f), or (g), creditors determine the date the creditor received the consumer's application, for purposes of this comment, in accordance with § 1026.2(a)(3)(ii). For transactions that are not subject to § 1026.19(e), (f), or (g), creditors can determine the date the creditor received the consumer's application, for purposes of this comment, in accordance with either § 1026.2(a)(3)(i) or (ii).

* * * * *

43(e)(2) Qualified mortgage defined—general.

1. *General QM Amendments Effective on March 1, 2021.* Comment 43–2 provides that, for a transaction for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022, a person has the option of complying either: With 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as it was in effect on February 26, 2021, together with any amendments to 12 CFR part 1026 that become effective after February 26, 2021, other than the revisions to Regulation Z contained in Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition published on December 29, 2020 (2021 General QM Amendments). Prior to the effective date of the 2021 General QM Amendments, § 1026.43(e)(2) provided a qualified mortgage definition that, among other things, required that the ratio of the consumer's total monthly debt to total monthly income at the time of consummation not exceed 43 percent. The 2021 General QM Amendments removed that requirement and replaced it with the annual percentage rate thresholds in § 1026.43(e)(2)(vi), among other revisions. Both the qualified mortgage definition in § 1026.43(e)(2) that was in effect prior to the 2021 General QM Amendments and the qualified mortgage definition in § 1026.43(e)(2) as amended by the 2021 General QM Amendments are available to creditors for transactions for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022. *See* comment 43–2 for an explanation of how creditors determine the date the creditor received the consumer's application for purposes of that comment.

* * * * *

43(e)(4) Qualified mortgage defined—other agencies.

1. *General.* The Department of Housing and Urban Development, Department of Veterans Affairs, and the Department of Agriculture have promulgated definitions for qualified mortgages under mortgage programs they insure, guarantee, or provide under applicable law. Cross-references to those definitions are listed in § 1026.43(e)(4) to acknowledge the covered transactions covered by those definitions are qualified mortgages for purposes of this section.

2. *Mortgages for which the creditor received the consumer's application prior to October 1, 2022.* Covered transactions that met the requirements of § 1026.43(e)(2)(i) through (iii), were eligible for purchase or guarantee by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (or any limited-life regulatory entity succeeding the charter of either) operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617), and for which the creditor received the consumer's application prior to the mandatory compliance date of October 1, 2022, continue to be qualified mortgages for the purposes of this section, including those covered transactions that were consummated on or after October 1, 2022.

3. *Mortgages for which the creditor received the consumer's application on or after March 1, 2021 but prior to October 1, 2022.* For a discussion of the optional early compliance period for the 2021 General QM Amendments, please see comment 43–2.

4. [Reserved].

5. [Reserved].

* * * * *

Dated: April 26, 2021.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2021–09028 Filed 4–29–21; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0319; Project Identifier AD–2021–00443–T; Amendment 39–21521; AD 2021–09–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–8 and 737–9 airplanes. This AD was prompted by manufacturing design changes to certain metallic support panel assemblies installed in the flight deck, which resulted in insufficient electrical bonding of the panels and consequent insufficient electrical grounding of installed equipment. This AD requires modification of the electrical bonding of these assemblies to provide sufficient electrical grounding for equipment installed in the flight deck. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 30, 2021.

The FAA must receive comments on this AD by June 14, 2021.

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

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0319; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Julio Alvarez, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3500; email: *9-FAA-SACO-AD-Inquiry@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA has received a report of an electrical bonding and grounding issue that was discovered during testing of a newly manufactured Boeing Model 737–8 airplane. During standard production testing by Boeing, electrical power systems did not perform as expected. Investigation identified insufficient bonding of certain metallic support panel assemblies installed in two areas of the flight deck, which affects the electrical grounding of installed equipment. The reported event occurred prior to delivery of that airplane. Investigation identified design changes to the flight deck support panel assemblies, which affected the dedicated bonding and grounding paths that existed prior to the changes. The affected areas are the P6 panel assembly, including the mounting tray for the standby power control unit (SPCU), located behind the first officer, and the main instrument panel (MIP) assembly located in front of and between the captain and first officer. The issue affects certain Boeing Model 737–8 and 737–9 airplanes manufactured after the design changes were implemented. All affected in-service airplanes passed all testing prior to delivery, and there have

been no reported in-service failures due to this condition. However, without dedicated grounding paths implemented by design, there is a potential for degradation or loss of the existing uncontrolled ground paths on those airplanes over time.

Degradation of bonds essential for the electrical grounding of equipment, if not addressed, could affect the operation of certain systems, including engine ice protection, and result in loss of critical functions and/or multiple simultaneous flight deck effects, which may prevent continued safe flight and landing. The FAA is issuing this AD to address the unsafe condition on these products.

All affected airplanes, both in the U.S. and worldwide, have been removed from service, pending development and implementation of approved corrective action that will address the unsafe condition.

FAA's Determination

The FAA is issuing this AD because the agency has determined that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires modifying the electrical bonding of certain support panel assemblies installed in the flight deck to provide sufficient electrical grounding for equipment installed in the flight deck.

The manufacturer is currently developing service information for a modification that will address the unsafe condition identified in this AD. Once this service information is developed, approved, and available, the FAA intends to approve that service information as a method of compliance for the requirements of this AD.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. On April 7, 2021, the FAA was advised by the manufacturer that its design changes to the referenced panel assemblies had created an urgent safety issue. On April 9, 2021, the manufacturer recommended to operators of affected airplanes that such airplanes be removed from service. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because degradation of bonds essential for the electrical grounding of equipment could affect the operation of certain systems, including engine ice protection, and result in loss of critical functions and/or multiple simultaneous flight deck effects, which may prevent continued safe flight and landing. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2021–0319 and Project Identifier AD–2021–00443–T at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule 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 *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

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 AD 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 AD, 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 AD. Submissions containing CBI should be sent to Julio Alvarez, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3500; email: *9-FAA-SACO-AD-Inquiry@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.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 71 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modify multiple flight deck panels (68 airplanes).	24 work-hours × $85 per hour = $2,040	$200	$2,240	$152,320
Modify one flight deck panel (3 airplanes)	9 work-hours × $85 per hour = $765	100	865	2,595

The FAA has included all estimated costs in the cost estimate. Some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–09–08 The Boeing Company: Amendment 39–21521; Docket No. FAA–2021–0319; Project Identifier AD–2021–00443–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 30, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–8 and 737–9 airplanes, certificated in any category, line numbers 7399 through 8082 inclusive, with an original airworthiness certificate or original export certificate of airworthiness issued on or before April 9, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power system.

(e) Unsafe Condition

This AD was prompted by manufacturing design changes to certain metallic support panel assemblies installed in the flight deck. The design changes resulted in insufficient bonding of the panel assemblies and consequent insufficient electrical grounding of installed equipment. Degradation of bonds essential for the electrical grounding of equipment could affect the operation of certain systems, including engine ice protection. The FAA is issuing this AD to prevent loss of critical functions and/or multiple simultaneous flight deck effects, which may prevent continued safe flight and landing.

(f) Compliance

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

(g) Modification

Before further flight, modify the electrical bonding of the support panel assemblies installed in the flight deck to provide sufficient electrical grounding for equipment installed in the flight deck, as specified in paragraphs (g)(1) and (2) of this AD, as applicable, in accordance with a method approved by the Manager, Seattle ACO Branch, FAA.

(1) Modify the electrical bonding of the P6 panel assembly, including the mounting tray for the standby power control unit (SPCU), located behind the first officer.

(2) Modify the electrical bonding of the main instrument panel (MIP) assembly located in front of and between the captain and first officer.

(h) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the airplane can be modified, provided the provisions specified in paragraphs (h)(1), (2), and (3) of this AD are met.

(1) The MAX display system (the inboard and outboard captain's and first officer's displays) is operative.

(2) The very high frequency (VHF) communication system (all VHF radios) is operative.

(3) The airplane is modified to improve the grounding path for the SPCU, in accordance with a method approved by the Manager, Seattle ACO Branch, FAA.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO 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 Related Information. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@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, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Julio Alvarez, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3500; email: *9-FAA-SACO-AD-Inquiry@faa.gov*.

(k) Material Incorporated by Reference

None.

Issued on April 27, 2021.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–09221 Filed 4–28–21; 2:00 pm]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1107 and 1112

[Docket No. CPSC–2021–0013]

Testing and Labeling Pertaining to Product Certification; Requirements Pertaining to Third Party Conformity Assessment Bodies

AGENCY: Consumer Product Safety Commission (CPSC).

ACTION: Direct final rule.

SUMMARY: This direct final rule updates the testing and third party conformity assessment body rules to incorporate by reference current versions of ISO/IEC 17025:2017(E) and ISO/IEC 17011:2017(E).

DATES: The rule is effective on July 29, 2021, unless CPSC receives a significant adverse comment by June 1, 2021. If CPSC receives such a comment, it will publish a document in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of July 29, 2021.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2021–0013, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (email), except through *https://www.regulations.gov* and as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. Alternatively, as a temporary option during the COVID–19 pandemic, you may email such submissions to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit electronically: Confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2021–0013, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Scott Heh, Program Manager, Third Party Laboratory Accreditation, U.S. Consumer Product Safety Commission, National Product Testing and Evaluation Center, Five Research Place, Rockville, MD 20850; 301–504–7646; email: *sheh@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 14(a)(2) of the Consumer Product Safety Act (CPSA) requires manufacturers and importers of children's products to certify that their products comply with all applicable children's product safety rules. Certification must be based on third party testing by a CPSC-accepted laboratory. Section 14(a)(3) of the CPSA requires the CPSC to publish a notice of requirements for the accreditation of third party testing laboratories to determine whether a children's product conforms to the applicable children's product safety rule. CPSC promulgated regulations implementing these statutory requirements as described below.

16 CFR Part 1107

The CPSC regulation for testing and labeling is 16 CFR part 1107. The Commission promulgated the final rule in November 2011. 76 FR 69482. The regulation at 16 CFR part 1107, among other things, incorporated by reference International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard ISO/IEC 17025:2005(E), ''General Requirements for the Competence of Testing and Calibration Laboratories'' (ISO/IEC 17025) and ISO/IEC 17011:2004(E) ''Conformity assessment—General requirements for Accreditation Bodies Accrediting Conformity Assessment Bodies'' (ISO/IEC 17011) in § 1107.21 regarding periodic testing. All manufacturers of children's products must conduct periodic testing. All periodic testing must be conducted by a CPSC-accepted third party conformity assessment body.

Under part 1107 a manufacturer must conduct periodic testing to ensure compliance with the applicable children's product safety rules at least once a year. The rule allows manufacturers to extend the time between required periodic testing to either two or three years, as follows:

- Two years—Required periodic testing by third party conformity assessment body may be extended to two years if the manufacturer implements a production testing plan as described in 16 CFR 1107.21(c)(2).
- Three years—Required periodic testing by a third party conformity assessment body may be extended to three years for manufacturers conducting testing to ensure continued compliance with the applicable children's product safety rules using a testing laboratory accredited to ISO/IEC 17025:2005(E). The testing laboratory used to ensure continued compliance during the three-year period is not required to be a CPSC-accepted testing laboratory. However, any ISO/IEC 17025:2005(E)-accredited testing laboratory used for ensuring continued compliance must be accredited by an accreditation body that is accredited to ISO/IEC 17011:2004(E) 16 CFR 1107.21(d)(1)).

Both ISO/IEC 17025:2005(E) and ISO/IEC 17011:2004(E) were incorporated by reference in the periodic testing section (§ 1107.21) of part 1107.

16 CFR Part 1112

The CPSC regulation for acceptance of third-party testing laboratories is 16 CFR part 1112. The Commission promulgated the final rule in March 2013. 78 FR 15836. The regulation at 16 CFR part 1112, among other things, establishes the baseline requirement for a laboratory to be CPSC accepted to conduct required third party testing on children's products. In order for a testing laboratory to be considered CPSC accepted, it must, among other things, be accredited to ISO/IEC 17025:2005(E), ''General Requirements for the Competence of Testing and Calibration Laboratories'' (ISO/IEC 17025). The testing laboratory's accreditation body must be a signatory to the International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement (ILAC-MRA). Testing laboratories that are ISO/IEC 17025 accredited are assessed to have the technical and managerial competence to conduct testing in accordance with the standards and test methods that are listed in the laboratory's scope of accreditation. The accreditation body issues the accreditation scope for the laboratory and posts it for public viewing on the

accreditation body's website. When the final rule was promulgated, ISO/IEC 17025:2005(E) was incorporated by reference in part 1112 (§ 1112.13).

B. Revisions to the ISO/IEC Standards

In 2017, ISO/IEC published updated versions of ISO/IEC 17025 and ISO/IEC 17011. A general description of the standards and what changes were made in the revisions follows.

Scope and Purpose of ISO/IEC 17025

Testing laboratories that are accredited to ISO/IEC 17025 have demonstrated that they operate competently and generate valid results, thereby promoting confidence in their testing results around the world. The standard facilitates cooperation between laboratories and other bodies by generating wider acceptance of test results among countries. Specifically, ISO/IEC 17025 enables the international acceptance of test reports and certificates without the need for further testing, which, in turn, facilitates international trade.

ISO/IEC 17025:2017(E) was developed to address market conditions and technology changes that have occurred since publication of the 2005 version of the standard. ISO has highlighted the reasons for the revised standard and the substantive changes included in the new version.[1] The changes include:

- A process approach that now matches that of newer standards such as ISO 9001 (quality management), and the ISO/IEC 17000 series (standards for conformity assessment activities), putting the emphasis on the results of a process instead of the detailed description of its tasks and steps.
- The standard has a stronger focus on information technologies. In recognition of the fact that hard-copy manuals, records and reports are slowly being phased out in favor of electronic versions, it incorporates the use of computer systems, electronic records and the production of electronic results and reports.
- A new section has been added introducing the concept of risk-based thinking and describes the commonalities with ISO 9001:2015, ''Quality management systems—Requirements.''

The main sections in ISO/IEC 17025:2017(E) are:

- General Requirements that include a provision stating that the laboratory shall identify risks to its impartiality on an ongoing basis and demonstrate how it minimizes such risk.
- Structural requirements that cover provisions for defining the organization and management of the laboratory and the role and authorities for laboratory management.
- Resource requirements that address aspects of personnel, facilities, and equipment.
- Process requirements include evaluation of measurement uncertainty, validation of methods, handling of test items, and reporting of results.
- Management System Requirements that include control of system documents and records, actions to address risks and opportunities, corrective actions, internal audits, and management reviews.

Transition Period From ISO/IEC 17025:2005(E) to ISO/IEC 17025:2017(E)

ILAC and ISO issued a ''Joint ILAC–ISO Communiqué on the recognition of ISO/IEC 17025 during a Three-Year Transition.'' [2]

The communiqué states:

> Laboratories wishing to demonstrate their technical competence can do so via conformity with the international standard ISO/IEC 17025 ''General requirements for the competence of testing and calibration laboratories.'' Conformity with this standard also means that the laboratory generally operates a management system in accordance with the principles of ISO 9001.
>
> In 2017, ISO published a revision to ISO/IEC 17025 (previously published in 2005) to ensure that requirements continue to meet the demands of the modern market place. As a consequence, it has been agreed that laboratories that demonstrate conformity through third party accreditation will need to transition their processes to the new version within a defined timeframe. ILAC, in consultation with ISO, agreed that a three-year period from the date of publication shall be allowed for this transition.
>
> During this transition period, it is important to note that both ISO/IEC 17025:2005E and ISO/IEC 17025:2017 are equally valid and applicable. Formal accreditation to either standard granted by an accreditation body that is a signatory to the ILAC Arrangement should be recognized by the market place, and it is strongly recommended that specifiers equally recognize both versions until after the 3-year transition period has closed.
>
> In June 2020, because of the ongoing worldwide pandemic, ILAC and ISO issued a revision to the communiqué that states:
>
> The end of the transition period has been extended from November 2020 to 1 June 2021. ILAC and ISO have agreed to this extension to ensure all laboratories are able to be transitioned following the restrictions imposed as a result of the global coronavirus disease 2019 (COVID–19) outbreak.

In January 2021, ILAC reported good progress towards achieving the revised June 2021 deadline, with 12 accreditation bodies confirming (as of November 30, 2020) that 100 percent of their laboratories accredited to ISO/IEC 17025 have transitioned to the 2017 version, and an additional 73 accreditation bodies confirming more than 75 percent laboratories had completed this transition.

Scope and Purpose of ISO/IEC 17011

ISO/IEC 17011 specifies requirements for the competence, consistent operation, and impartiality of accreditation bodies assessing and accrediting conformity assessment bodies. For CPSC purposes, the conformity assessment bodies are third party testing laboratories.

As is the case for the ISO/IEC 17025 revision, the new version of ISO/IEC 17011 includes alignment with the common structure for the ISO 17000 series standards. The revised standard adds concepts of risk and risk-based assessments. The revised standard also incorporates competence criteria in the document, including an informative annex on knowledge and skills.

Transition Period from ISO/IEC 17011:2004(E) to ISO/IEC 17011:2017(E)

The transition from ISO/IEC 17011:2004(E) to ISO/IEC 17011:2017(E) was completed in December 2020. All ILAC–MRA signatory accreditation bodies are now conducting assessment activities according to ISO/IEC 17011:2017(E).

C. Description of the Direct Final Rule

The direct final rule (DFR) only amends those sections of 16 CFR parts 1107 and 1112 that incorporate by reference or refer to ISO/IEC 17025:2005(E) and ISO/IEC 17011:2004(E). The DFR updates the incorporation by reference provisions of the regulations and references to the standards in 16 CFR parts 1107 and 1112 from ISO/IEC 17025:2005(E) and ISO/IEC 17011:2004(E) to ISO/IEC 17025:2017(E) and ISO/IEC 17011:2017(E), as applicable, in the sections listed below:

16 CFR Part 1107

- Section 1107.21(d)(1)
- Section 1107.21(g)
- Section 1107.26(a)(3)(iii)

16 CFR Part 1112

- Section 1112.3 definition of Accreditation body
- Section 1112.13(a)(2)(i)
- Section 1112.13(i)
- Section 1112.43(a)(3)

[1] International Organization for Standardization—Brochure summarizes the key changes adopted in the 2017 version of ISO/IEC 17025. *https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100424.pdf.*

[2] *https://ilac.org/?ddownload=123170.*

The DFR makes no other changes to part 1107 or 1112.

D. Effective Date

The Administrative Procedure Act (APA) generally requires that a substantive rule must be published not less than 30 days before its effective date. 5 U.S.C. 553(d)(1). The DFR sets an effective date of 90 days after publication in the **Federal Register**. CPSC staff determined that all testing laboratories that are currently CPSC-accepted, and testing laboratories that are seeking CPSC-acceptance, will have completed their accreditation renewal to ISO/IEC 17025:2017(E) before the rule's effective date. Thus, the effective date for rule is July 29, 2021.

E. Incorporation by Reference

The DFR updates the sections of 16 CFR parts 1107 and 1112 that incorporate by reference ISO/IEC 17025:2017(E) and ISO/IEC 17011:2017(E). The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section B, of this preamble summarizes the major provisions of ISO/IEC 17025:2017(E) and ISO/IEC 17011:2017(E) that the Commission incorporates by reference into sections of 16 CFR parts 1107 and 1112. The standard is reasonably available to interested parties and interested parties can purchase a copy of ISO/IEC 17025:2017(E) and ISO/IEC 17011:2017(E) from the International Organization for Standardization (ISO), ISO Central Secretariat Chemin de Blandonnet 8 CP 401—1214 Vernier, Geneva, Switzerland; Telephone + 41 22 749 01 11, Fax + 41 22 733 34 30; *http://www.iso.org/iso/home.htm.* Interested parties can also schedule an appointment to inspect a copy of the standards at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency, ''for good cause finds,'' that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' *Id.* 553(b)(B). The Commission concludes that when merely updating the incorporations by references contained in 16 CFR parts 1107 and 1112 to reflect the current versions of ISO/IEC 17025:2017(E) and ISO/IEC 17011:2017(E), notice and comment is unnecessary.

The purpose of this direct final rule is to update the references in the CFR so that it reflects the versions of the voluntary standards currently in effect. The ISO/IEC 17025:2017(E) and ISO/IEC 17011:2017(E) updates to the voluntary standards are not controversial, and are almost universally complied with by the testing and accreditation community involved in CPSA required testing. We do not expect any adverse comments regarding the updates to the references to ISO/IEC 17025:2017(E) and ISO/IEC 17011:2017(E) in the CFR.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the ''unnecessary'' prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on July 29, 2021. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be ''one where the commenter explains why the rule would be inappropriate,'' including an assertion challenging ''the rule's underlying premise or approach,'' or a claim that the rule ''would be ineffective or unacceptable without change.'' 60 FR 43108, 43111. As noted, this rule simply updates the references in the CFR to reflect noncontroversial changes to ISO/IEC 17025:2017(E) and ISO/IEC 17011:2017(E) and are almost universally complied with by the testing and accreditation community involved in CPSA required testing.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. 5 U.S.C. 603 and 604. As explained above, the Commission has determined that notice and comment is not necessary for this direct final rule. Thus, the RFA does not apply. We also note the limited nature of this document. The amendments to parts 1107 and 1112 simply update the incorporations by reference provisions and citations in the regulations to the current versions of ISO/IEC 17025 and ISO/IEC 17011 and will not result in any substantive changes to the regulations. Rather, with this action, the CFR will reflect the current versions of ISO/IEC 17025 and ISO/IEC 17011 in 16 CFR parts 1107 and 1112. However, the impact of the direct final rule on any testing laboratory that maintains its accreditation solely to conduct third party testing is not expected to be large and would be undertaken by the testing laboratory only if it expected to make sufficient revenue from third party testing under the CPSA to justify the expense.

H. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

I. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA

submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.''

Pursuant to the CRA, this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects

16 CFR Part 1107

Business and industry, Children, Consumer protection, Imports, Incorporation by reference, Product testing and certification, Records, Record retention, Toys.

16 CFR Part 1112

Audit, Consumer protection, Incorporation by reference, Third party conformity assessment body requirements.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1107—TESTING AND LABELING PERTAINING TO PRODUCT CERTIFICATION

■ 1. The authority citation for part 1107 continues to read as follows:

Authority: 15 U.S.C. 2063, Sec. 3, 102 Pub. L. 110–314, 122 Stat. 3016, 3017, 3022.

■ 2. Amend § 1107.21 by:
■ a. In paragraph (d)(1), removing the phrases ''ISO/IEC 17025:2005(E)'' and ''ISO/IEC 17011:2004(E)'' everywhere they appear and adding in their places the phrases ''ISO/IEC 17025'' and ''ISO/IEC 17011'', respectively; and
■ b. Revising paragraph (g).

The revision reads as follows:

§ 1107.21 Periodic testing.

* * * * *

(g) *Incorporation by reference.* The Director of the Federal Register approves the incorporation by reference of the standards in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email: *cpsc-os@cpsc.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(1) International Organization for Standardization (ISO), ISO Central Secretariat Chemin de Blandonnet 8 CP 401—1214 Vernier, Geneva, Switzerland; Telephone + 41 22 749 01 11, Fax + 41 22 733 34 30; *http://www.iso.org/iso/home.htm.*

(i) ISO/IEC 17011:2017(E) (ISO/IEC 17011), ''Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies,'' November 10, 2017; and

(ii) ISO/IEC 17025:2017(E) (ISO/IEC 17025), ''General requirements for the competence of testing and calibration laboratories,'' November 10, 2017.

(2) [Reserved]

§ 1107.26 [Amended]

■ 3. In § 1107.26(a)(3)(iii), remove the phrase ''ISO/IEC 17025:2005(E)'' and add in its place the phrase ''ISO/IEC 17025 (see § 1107.21 for availability)''.

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 4. The authority citation for part 1112 is continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

§ 1112.3 [Amended]

■ 5. In § 1112.3, in paragraph (1) under the definition for ''Accreditation body'', remove the phrase ''ISO/IEC 17025:2005'' and add in its place the phrase ''ISO/IEC 17025 (see § 1107.21 of this chapter for availability)''.

■ 6. Amend § 1112.13 by:
■ a. In paragraph (a)(2)(i)(A), removing the phrase ''ISO/IEC Standard 17025:2005(E)'' and adding in its place the phrase ''ISO/IEC 17025''; and
■ b. Revising paragraph (i).

The revision reads as follows:

§ 1112.13 How does a third party conformity assessment body apply for CPSC acceptance?

* * * * *

(i) *Incorporation by reference.* The Director of the Federal Register approves the incorporation by reference in paragraph (a)(2)(i) of this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of ISO/IEC 17025:2017(E), ''Requirements for the competence of testing and calibration laboratories,'' approved November 10, 2021 from the International Organization for Standardization (ISO), ISO Central Secretariat Chemin de Blandonnet 8 CP 401–1214 Vernier, Geneva, Switzerland; Telephone + 41 22 749 01 11, Fax + 41 22 733 34 30; *http://www.iso.org/iso/home.htm.* You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email: *cpsc-os@cpsc.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

§ 1112.43 [Amended]

■ 7. In § 1112.43(a)(3), remove the phrase ''ISO/IEC 17025:2005(E)'' and add in its place the phrase ''ISO/IEC 17025:2017(E)''.

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2021–08819 Filed 4–29–21; 8:45 am]

BILLING CODE 6355–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 200

RIN 3220–AB 76

Guidance Documents

AGENCY: Railroad Retirement Board.

ACTION: Final rule; rescission of regulation.

SUMMARY: In accordance with Executive Order 13992, ''Revocation of Certain Executive Orders Concerning Federal Regulation,'' issued by President Biden on January 20, 2021, this final rule rescinds the Railroad Retirement Board's rule on guidance.

DATES: This final rule is effective April 30, 2021.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275, telephone (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: On August 28, 2020, the Railroad Retirement Board published an interim final rule on guidance implementing Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents,'' signed by President Donald Trump on October 9, 2019 (85 FR 53160). As required by the Executive Order, the rule contained policy and requirements for issuing, modifying, withdrawing, and using guidance, making guidance available to the public, a notice and comment process for significant guidance, and taking and responding to petitions about guidance. On January 20, 2021, President Joseph Biden issued Executive Order 13992, ''Revocation of Certain Executive Orders

Concerning Federal Regulation'' which among other things, revoked Executive Order 13891 and directed agencies to take steps promptly to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing the revoked Executive Orders (86 FR 7049).

In order to comply with Executive Order 13992, the Railroad Retirement Board has determined that this rule is suitable for final rulemaking. The Railroad Retirement Board also finds good cause to provide for an immediate effective date for this rule, because it imposes no obligations on parties inside or outside the federal government and therefore no advance notice is required to enable employees or other private parties to come into compliance.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, General administration.

For the reasons set out in the preamble and under the authority of 45 U.S.C. 231f(b)(5), the Railroad Retirement Board amends title 20, chapter II, subchapter A, part 200, of the Code of Federal Regulations as follows:

PART 200—GENERAL ADMINISTRATION

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

§ 200.11 [Removed]

■ 2. Remove § 200.11.

By Authority of the Board.

Dated: April 26, 2021.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2021–09036 Filed 4–29–21; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 16

[Docket No. TTB–2021–0002; Notice No. 201]

Civil Monetary Penalty Inflation Adjustment—Alcoholic Beverage Labeling Act

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notification of civil monetary penalty adjustment.

SUMMARY: This document informs the public that the maximum penalty for violations of the Alcoholic Beverage Labeling Act (ABLA) is being adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Prior to the publication of this document, any person who violated the provisions of the ABLA was subject to a civil penalty of not more than $21,039, with each day constituting a separate offense. This document announces that this maximum penalty is being increased to $21,663.

DATES: The new maximum civil penalty for violations of the ABLA takes effect on April 30, 2021 and applies to penalties that are assessed after that date.

FOR FURTHER INFORMATION CONTACT: Kate M. Bresnahan, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; (202) 453–1039, ext. 151.

SUPPLEMENTARY INFORMATION:

Background

Statutory Authority for Federal Civil Monetary Penalty Inflation Adjustments

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, section 701, 129 Stat. 584, requires the regular adjustment and evaluation of civil monetary penalties to maintain their deterrent effect and helps to ensure that penalty amounts imposed by the Federal Government are properly accounted for and collected. A ''civil monetary penalty'' is defined in the Inflation Adjustment Act as any penalty, fine, or other such sanction that is: (1) For a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The Inflation Adjustment Act, as amended, requires agencies to adjust civil monetary penalties annually by the inflation adjustment described in section 5 of the Inflation Adjustment Act. The Act also provides that any increase in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such an increase, which are assessed after the date the increase takes effect.

The Inflation Adjustment Act, as amended, provides that the inflation adjustment does not apply to civil monetary penalties under the Internal Revenue Code of 1986 or the Tariff Act of 1930.

Alcoholic Beverage Labeling Act

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the Federal Alcohol Administration Act (FAA Act) pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Department Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

The FAA Act contains the Alcoholic Beverage Labeling Act (ABLA) of 1988, Public Law 100–690, 27 U.S.C. 213–219a, which was enacted on November 18, 1988. Section 204 of the ABLA, codified in 27 U.S.C. 215, requires that a health warning statement appear on the labels of all containers of alcoholic beverages manufactured, imported, or bottled for sale or distribution in the United States, as well as on containers of alcoholic beverages that are manufactured, imported, bottled, or labeled for sale, distribution, or shipment to members or units of the U.S. Armed Forces, including those located outside the United States.

The health warning statement requirement applies to containers of alcoholic beverages manufactured, imported, or bottled for sale or distribution in the United States on or after November 18, 1989. The statement reads as follows:

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

Section 204 of the ABLA also specifies that the Secretary of the Treasury shall have the power to ensure the enforcement of the provisions of the ABLA and issue regulations to carry them out. In addition, section 207 of the ABLA, codified in 27 U.S.C. 218, provides that any person who violates the provisions of the ABLA is subject to a civil penalty of not more than $10,000, with each day constituting a separate offense.

Most of the civil monetary penalties TTB administers are imposed by the Internal Revenue Code of 1986, and thus are not subject to the inflation adjustment mandated by the Inflation Adjustment Act. The only civil monetary penalty TTB enforces that is subject to the inflation adjustment is the penalty imposed by the ABLA at 27 U.S.C. 218.

TTB Regulations

The TTB regulations implementing the ABLA are found in 27 CFR part 16, and the regulations implementing the Inflation Adjustment Act with respect to the ABLA penalty are found in 27 CFR 16.33. This section provides that, in accordance with the ABLA, any person who violates the provisions of this part is subject to a civil penalty of not more than $10,000. Further, pursuant to the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, this civil penalty is subject to periodic cost-of-living adjustments. Accordingly, any person who violates the provisions of 27 CFR part 16 is subject to a civil penalty of not more than the amount listed at *https://www.ttb.gov/laws-regulations-and-public-guidance/labeling-act-penalty.* Each day constitutes a separate offense.

To adjust the penalty, § 16.33(b) states that TTB will provide notice in the **Federal Register** and at the website mentioned above of cost-of-living adjustments to the civil penalty for violations of 27 CFR part 16.

Penalty Adjustment

In this document, TTB is adjusting the maximum ABLA penalty, as required by the amended Inflation Adjustment Act. TTB last published a yearly adjustment on April 9, 2019 (Notice No. 180, 84 FR 14614). TTB did not publish an adjustment in 2020. In order to satisfy the annual adjustment requirement, TTB is making the 2021 adjustment in this document. Since adjustments apply to penalties assessed after the effective date of the adjustment, TTB will not assess any penalties based on the amount that would have been the 2020 adjustment, but is including the calculation below to illustrate how it arrived at its 2021 adjustment.

As mentioned earlier, the ABLA contains a maximum civil monetary penalty. For such penalties, section 5 of the Inflation Adjustment Act indicates that the inflation adjustment is determined by increasing the maximum penalty by the cost-of-living adjustment. The cost-of-living adjustment means the percentage increase (if any) between the Consumer Price Index for all-urban consumers (CPI–U) for the October preceding the date of the adjustment and the prior year's October CPI–U.

The CPI–U in October 2018 was 252.885, and the CPI–U in October 2019 was 257.346. The rate of inflation between October 2018 and October 2019 was therefore 1.764 percent. When applied to the current ABLA penalty of $21,039, this rate of inflation yields a raw (unrounded) inflation adjustment of $371.12796. Rounded to the nearest dollar, this inflation adjustment is $371, meaning that the 2020 maximum civil penalty for violations of the ABLA would have been $21,410.

The CPI–U in October 2019 was 257.346, and the CPI–U in October 2020 was 260.388. The rate of inflation between October 2019 and October 2020 was therefore 1.182 percent. When applied to the 2020 ABLA penalty of $21,410 calculated in the previous paragraph, this rate of inflation yields a raw (unrounded) inflation adjustment of $253.0662. Rounded to the nearest dollar, the inflation adjustment is $253, meaning that the new maximum civil penalty for violations of the ABLA will be $21,663.

The new maximum civil penalty of $21,663 will apply to all penalties that are assessed after April 30, 2021. TTB will also update its web page at *https://www.ttb.gov/laws-regulations-and-public-guidance/labeling-act-penalty* to reflect the adjusted penalty.

Dated: April 23, 2021.

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2021–08863 Filed 4–29–21; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0285]

RIN 1625–AA87

Security Zone, Christina River, Newport, DE

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone for the protection of persons under the protection of the United States Secret Service (USSS) as they transit by vehicle on the route 141 bridge over the Christina River near Newport, Delaware. The security zone will be enforced intermittently and only during times necessary to protect persons under the protection of the USSS as they transit over the bridge and will restrict vessel traffic while the zone is being enforced. Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or designated representative, may enter or remain in the regulated area.

DATES: This rule is effective without actual notice from April 30, 2021 through May 17, 2021. For the purposes of enforcement, actual notice will be used from 2 p.m. on April 23, 2021 until April 30, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0285 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Edmund Ofalt, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone 215–271–4814, email *Edmund.J.Ofalt@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 without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This 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.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was not notified by the United States Secret Service of the visit with sufficient time to publish a NPRM prior to the arrival of persons under the protection of the USSS. Delay in promulgating this rule would be impracticable because a security zone is required to be in place by April 23, 2021, to protect these persons under the protection of the USSS in the vicinity of

this waterway. The presence of these persons creates unique safety and security concerns.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** for the same reasons discussed above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Delaware Bay (COTP) has determined that persons under the protection of the USSS transits starting April 23, 2021 present a potential target for terrorist acts, sabatoge, or other subversive acts, accidents, or other causes of a similar nature. Due to the roadway passing over the Christina River, this security zone is necessary to protect these persons, the public, and the surrounding waterway.

IV. Discussion of the Rule

This rule establishes a temporary security zone from 2 p.m. on April 23, 2021, through 11:59 p.m. on May 17, 2021, on certain waters of the Christina River near Newport, Delaware. The security zone is bounded on the east by a line drawn from 39°42.55′ North Latitude (N), 075°35.88′ West Longitude (W), thence southerly to 39°42.50′ N, 075°35.87′ W proceding from shoreline to shoreline on the Christina River in a westerly direction where it is bounded by the South James Street Bridge at 39°42.63′ N, 075°36.53′ W.

This zone will be enforced intermittently during the effective dates. Enforcement of this zone will be broadcast via Broadcast Notice to Mariners on VHF–FM marine channel 16, as well as actual notice via on scene Coast Guard Personnel.

No vessel or person will be permitted to enter or remain within this zone without permission from the COTP or a designated representative.

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 Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the location, duration and time of year of the security zone. Vessel traffic on this portion of the Christina River is typically limited to recreational traffic. The zone will be enforced intermittently and broadcast via VHF–FM channel 16 allowing vessel traffic time to trainsit outside of enforcement times. The time of year of this security zone has limited recreational traffic due to weather and the potential presence of ice.

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 security 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 security zone which will be

intermittently enforced over the course of approximately 24 days. It is categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

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; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0285 to read as follows:

§ 165.T05–0285 Security Zone; Christina River, Newport, DE.

(a) *Location.* The following area is a security zone: All waters of the Christina River, from shoreline to shoreline bounded on the east by a line drawn from 39°42.55′ North Latitude (N), 075°35.88′ West Longitude (W), thence southerly to 39°42.50′ N, 075°35.87′ W thence along the Christina River in a westerly direction and bounded by the South James Street Bridge at 39°42.63′ N, 075°36.53′ W. These coordinates are based on North American Datum 83 (NAD83).

(b) *Definitions.* As used in this section—

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Delaware Bay (COTP) to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of the regulations in this section.

Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessel assigned or approved by the COTP.

USSS protectee means any person for whom the United States Secret Service (USSS) requests implementation of a security zone in order to supplement protection of said person(s).

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.33, entry into or movement within this zone is prohibited unless authorized by the COTP, Sector Delaware Bay, or designated representative.

(2) Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or designated representative, may enter or remain in the regulated area. To request permission to enter or remain in the regulated area contact the COTP or the COTP's representative on VHF–FM channel 13 or 16. Vessel operators and persons within the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. No person may swim upon or below the surface of the water of this security zone unless authorized by the COTP or his designated representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(d) *Enforcement.* (1) This security zone is effective without actual notice from April 30, 2021 through May 17, 2021. For the purposes of enforcement, actual notice will be used from 2 p.m. on April 23, 2021 until April 30, 2021.

(2) This security zone will be enforced with actual notice by the U.S. Coast Guard representatives on scene, as well as other methods listed in § 165.7. The Coast Guard will enforce the security zone created by this section only when it is necessary for the protection of persons under the protection of the USSS traveling across the route 141 bridge in Newport, Delaware. The U.S. Coast Guard may be additionally assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

Dated: April 23, 2021.

Leon McClain, Jr.,

Captain, U.S. Coast Guard, Acting Captain of the Port, Delaware Bay.

[FR Doc. 2021–08853 Filed 4–29–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 721, and 725

[EPA–HQ–OPPT–2020–0094; FRL–10016–30]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (20–3.B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs) and a microorganism that was the subject of a Microbial Commercial Activity Notice (MCAN). This action requires persons to notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this rule. This action further requires that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice (SNUN), and EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken any risk management actions as are required as a result of that determination.

DATES: This rule is effective on June 29, 2021. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on May 14, 2021.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions. This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA, which would include the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20 or 725.920 for the MCAN substance, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0094, is available at *https://www.regulations.gov* and at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

Due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

II. Background

A. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for chemical substances which were the subject of MCAN J–19–1 and PMNs P–18–391 and P–20–13. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III.

C. Do the SNUR general provisions apply?

General provisions for SNURs appear in 40 CFR part 721, subpart A, and (for microorganisms) 40 CFR part 725, subpart L. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A) (15 U.S.C. 2604(a)(1)(A)). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1) (15 U.S.C. 2604(b) and 2604(d)(1)), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

A. Determination Factors

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit. During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters, but reasonably foreseen to occur. EPA is designating those reasonably foreseen conditions of use as well as certain other circumstances of use as significant new uses.

B. Procedures for Significant New Uses Claimed as Confidential Business Information (CBI)

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1) and has referenced it to apply to other SNURs.

Under these procedures a manufacturer or processor may request EPA to determine whether a specific use would be a significant new use under the rule. The manufacturer or processor

must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

IV. Public Comments

EPA received public comments on the proposed rule (85 FR 15406, March 18, 2020) from four identifying entities. The Agency's responses are presented in the Response to Public Comments document that is available in the docket for this rule. EPA has made changes to the final rule as described in these comments.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E, and in 40 CFR part 725 for one chemical substance that is a microorganism (MCAN J–19–1). In Unit IV. of the proposed SNUR, EPA provided the following information for each chemical substance:

- PMN or MCAN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Potentially useful information.
- CFR citation assigned in the regulatory text section of this final rule.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs and MCAN submitted for the chemical substances that are the subject of these SNURs and as further discussed in Unit IV. of the proposed rule, EPA identified certain other reasonably foreseen conditions of use in addition to those conditions of use intended by the submitter. EPA has preliminarily determined that the chemical under the intended conditions of use is not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use. EPA is designating these conditions of use as well as certain other circumstances of use as significant new uses. As a result, those significant new uses cannot occur without going through a separate, subsequent EPA review and determination process associated with a SNUN.

B. Objectives

EPA is issuing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.
- To be able to complete its review and determination on each of the PMN or MCAN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

VII. Applicability of the Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule were undergoing premanufacture review at the time of signature of the proposed rule and were not on the TSCA inventory. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for the chemical substances subject to these SNURs EPA concluded at the time of signature of the proposed rule that the designated significant new uses were not ongoing.

EPA designated March 4, 2020 (the date of web posting of the proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who began commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under section 5 allowing manufacture or processing to proceed.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section

4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. of the proposed rule will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol election. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information described in Unit IV. of the proposed rule may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

IX. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25 (or 40 CFR 725.25 and 725.27 for an MCAN). E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket for this rulemaking.

XI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action establishes SNURs for new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 0574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b), 5 U.S.C. 601 *et seq.,* I hereby certify that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use''. Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018. Only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant

economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

K. Congressional Review Act (CRA)

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

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 725

Environmental protection, Chemicals, Hazardous substances, Microorganisms, Reporting and recordkeeping requirements.

Dated: January 14, 2021.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Editorial Note: This document was received for publication by the Office of the Federal Register on April 23, 2021.

Therefore, for the reasons set forth in the preamble, EPA amends 40 CFR parts 9, 721, and 725 as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11460 and 721.11461 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11460	2070–0012
721.11461	2070–0012
* * * * *	

* * * * *

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add §§ 721.11460 and 721.11461 to read as follows:

§ 721.11460 1-Propanaminium, N-(carboxymethyl)-N,N-dimethyl-3-[(3,5,5-trimethyl-1-oxohexyl)amino]-, inner salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-Propanaminium, N-(carboxymethyl)-N,N-dimethyl-3-[(3,5,5-trimethyl-1-oxohexyl)amino]-, inner salt. (PMN P–18–391; CASRN 2169783–63–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance for any use that results in inhalation exposures.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are

applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11461 2-Propenoic acid, 2-methyl-, (2-oxo-1,3-dioxolan-4-yl)methyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, 2-methyl-, (2-oxo-1,3-dioxolan-4-yl)methyl ester (PMN P–20–13; CASRN 13818–44–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) and (o). It is a significant new use to manufacture or import greater than the confidential annual production volume identified in the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

PART 725—REPORTING REQUIREMENTS AND REVIEW PROCESSES FOR MICROORGANISMS

■ 5. The authority citation for part 725 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625.

■ 6. Add § 725.1080 to read as follows:

§ 725.1080 Trichoderma reesei (generic).

(a) *Microorganism and significant new uses subject to reporting.* (1) The genetically modified microorganism identified as *Trichoderma reesei* strain 3CH–3 (MCAN J–19–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2)(i) The significant new use is any manufacturing, processing, or use of the microorganism other than in a fermentation system that meets all of the following conditions:

(A) Enzyme production occurs by submerged fermentation (*i.e.,* for enzyme production, growth of the microorganism occurs beneath the surface of the liquid growth medium); and

(B) Any further fermentation, such as saccharification (*i.e.,* addition of *Trichoderma reesei* fermentation broth to solid plant material or insoluble substrate after the standard industrial fermentation is completed), is initiated only after the inactivation of the microorganism as delineated in § 725.422(d).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) though (c) and (i) of this chapter, are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 of this chapter apply to this section.

[FR Doc. 2021–08880 Filed 4–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2021–0059; FRL–10022–53–Region 6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Louisiana; Control of Emissions From Existing Other Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is notifying the public that we have received a CAA section 111(d)/129 negative declaration from Louisiana for existing incinerators subject to the Other Solid Waste Incineration units (OSWI) emission guidelines (EG). This negative declaration from Louisiana certifies that incinerators subject to the OSWI EG and the requirements of sections 111(d) and 129 of the CAA do not exist within the jurisdiction of Louisiana. The EPA is accepting the negative declaration and amending the agency regulations in accordance with the requirements of the CAA.

DATES: This rule is effective on June 1, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2021–0059. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information 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 either electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division—State Planning and Implementation Branch, 1201 Elm Street, Suite 500, Dallas, TX 75270, (214) 665–7346, *ruan-lei.karolina@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our February 24, 2021, proposal (86 FR 11212). In that document we proposed to accept the OSWI negative declaration from the Louisiana Department of Environmental Quality (LDEQ) and to amend the Code of Federal Regulations (CFR) in accordance with the requirements of the CAA. No comments were received on the February 24, 2021, proposal.

II. Final Action

In this final action, the EPA is amending 40 CFR part 62, subpart T, to reflect receipt of the negative declaration letter from LDEQ, received on November 24, 2020, certifying that there are no existing incinerators subject to 40 CFR part 60, subpart FFFF, in its jurisdiction in accordance with 40 CFR 60.23(b), 40 CFR 62.06, 40 CFR 60.2982, and sections 111(d) and 129 of the CAA.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 submission that complies

with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and FFFF; and 40 CFR part 62, subpart A. With regard to negative declarations for designated facilities received by the EPA from states, the EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. 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
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This rule also does not have Tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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).

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 June 29, 2021. 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 for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: April 23, 2021.

David Gray,

Acting Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart T—Louisiana

■ 2. Add an undesignated center heading and § 62.4675 to read as follows:

Emissions From Existing Other Solid Waste Incineration Units

§ 62.4675 Identification of plan—negative declaration.

Letter from the Louisiana Department of Environmental Quality dated November 24, 2020, certifying that there are no incinerators subject to the Other Solid Waste Incineration units (OSWI) Emission Guidelines, at 40 CFR part 60, subpart FFFF, within its jurisdiction in the State of Louisiana.

[FR Doc. 2021–08915 Filed 4–29–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2020–0050; FF09E21000 FXES11110900000 212]

RIN 1018–BF01

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Northern Spotted Owl; Delay of Effective Date

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; delay of effective date.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are delaying the effective date of a final rule we published on January 15, 2021, revising the designation of critical habitat for the northern spotted owl (*Strix occidentalis caurina*) under the Endangered Species Act of 1973, as amended. This second delay is necessary to avoid placing undue risk on the conservation of northern spotted owl caused by allowing exclusions from its designated critical habitat to go into effect while the Service prepares a revision or withdrawal of the January 15, 2021, rule through additional rulemaking to address apparent defects; this second delay is also necessary to avoid confusion and disruption with Federal agencies in the implementation of section 7 of the Endangered Species Act while the Service initiates and completes the rulemaking process for revising or withdrawing the January 15, 2021, rule.

DATES: As of April 29, 2021, the effective date of the final rule published January 15, 2021, at 86 FR 4820, and delayed on March 1, 2021 (86 FR 11892), is further delayed until December 15, 2021.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0050 and at *http://www.fws.gov/oregonfwo.* Comments and materials we received on previous documents related to this rulemaking action, as well as some of the supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0050.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Portland, OR 97030, telephone 503–231–6179. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2012, we published in the **Federal Register** (77 FR 71876) a final rule designating revised critical habitat for the northern spotted owl. Most of the areas designated as critical habitat are located on Federal lands, with a small amount of State and local government lands included in the designation. No areas of private land were designated. On August 11, 2020, we proposed a rule (85 FR 48487; referred to hereafter as the August 11, 2020, Proposed Rule) to exclude 204,653 acres (82,820 hectares) in 15 counties in Oregon from that revised designated critical habitat pursuant to the Secretary of the Interior's discretionary authority under section 4(b)(2) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and we solicited public comment on that proposed rule. On January 15, 2021, we published a final rule (86 FR 4820) (referred to hereafter as the January 15, 2021, Final Rule) revising the designated critical habitat for the northern spotted owl by excluding approximately 3,472,064 acres (1,405,094 hectares) in 14 counties in Washington, 21 counties in Oregon, and 10 counties in California. Of the over 3.4 million acres excluded, about 20,000 acres (8,094 hectares) are Federal Indian lands, recently transferred by congressional action to be held in trust for two federally recognized Tribes, and the remainder are Federal lands managed by either the Bureau of Land Management (BLM) or the U.S. Forest Service (USFS).

On March 1, 2021, we issued a final rule delaying the effective date of the January 15, 2021, Final Rule from March 16, 2021, to April 30, 2021, to allow for review of issues of fact, law, and policy raised by that final rule, and we opened a 30-day public comment period on the January 15, 2021, Final Rule, as well as on the potential for an additional delay of the effective date so as to avoid adverse consequences to conservation of the species and to Federal agencies if the exclusions were to go into effect during that rulemaking process (86 FR 11892; referred to hereafter as the March 1, 2021, Delay Rule). On March 5, a lawsuit was filed challenging the March 1, 2021, Delay Rule, *American Forest Resources Council et al.* v. *Williams et al.,* No. 1:21–cv–00601 (D.D.C. March 5, 2021) (*AFRC*). Plaintiffs in that case assert that our March 1, 2021, Delay Rule extending the effective date of the January 15, 2021, Final Rule violates the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*) and the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (O&C Act; 43 U.S.C. 2601 *et seq.*). The *AFRC* plaintiffs seek implementation of the January 15, 2021, Final Rule without further delay. As of this writing, the *AFRC* plaintiffs have filed a motion for summary judgment, and the Government filed a brief in opposition on April 15, 2021. On March 23, 2021, a lawsuit was filed challenging the January 15, 2021, Final Rule, *Audubon Society of Portland, et al.* v. *United States Fish and Wildlife Service,* No. 3:21–cv–00443 (D. Or., March 23, 2021) (*Audubon*). Plaintiffs in that case assert that the January 15, 2021, Final Rule violates both the APA and the ESA. The *Audubon* plaintiffs request the court vacate the January 15, 2021, Final Rule. As of this writing, briefing has not commenced in that case.

On March 31, 2021, the comment period we opened in our March 1, 2021, Delay Rule closed. Based on the comments received, and other new information, we are extending the effective date of the January 15, 2021, Final Rule from April 30, 2021, until December 15, 2021.

Public Comments

As described in our March 1, 2021, Delay Rule, the January 15, 2021, Final Rule raised several questions of law, fact, and policy. We invited public comment on those questions, as well as comments on the impact of the delay of the effective date and any further delay that might be considered. We received a total of 2,237 comments through the comment period that ended March 31, 2021. The comments addressed matters of substantive law and policy under the ESA, as well as under the APA and other laws. These comments raise new issues and, in part, suggest legitimate bases for the litigation challenging the January 15, 2021, Final Rule. During this second period of delay, we will conduct factual and legal research, and address and respond to the substantive comments specific to those issues in a subsequent **Federal Register** publication. We intend to prepare a notice of proposed rulemaking to revise or withdraw the January 15, 2021, Final Rule to address apparent defects that the public comments raised. This includes publishing a proposed rule and seeking public comment. In this rule delaying the effective date, we summarize and respond to the substantive comments that specifically relate to the delay of the January 15, 2021, Final Rule's effective date.

In this section, we identify potential defects in the January 15, 2021, Final Rule based on the comments received and summarize the comments received generally. Comments regarding the impact of delaying the January 15, 2021, Final Rule further, or implementing it now, are addressed in greater detail below under Discussion, as those comments have the most bearing on this final rule.

We received comments that identified potential defects in the January 15, 2021, Final Rule—both procedurally and substantively. In addition, since the publication of the January 15, 2021, Final Rule, our reexamination has identified potential shortcomings of the Final Rule. Potential defects and shortcomings of the January 15, 2021, Final Rule include:

1. That the January 15, 2021, Final Rule was not a logical outgrowth of the proposed rule because among other things it excluded substantially more acres and included new rationales for the exclusions not discussed in the proposed rule.

2. That the January 15, 2021, Final Rule did not utilize the best scientific data available, including from our recent finding that the species warrants reclassification as endangered—that is, that the species is in danger of extinction throughout all or a significant portion of its range—among other new information.

3. That the January 15, 2021, Final Rule failed to address the economic benefits of maintaining the designated critical habitat particularly as to environmental benefits to communities, and thus failed to identify or address the adverse economic costs of the exclusions on these resources.

4. That the January 15, 2021, Final Rule relied upon a large-scale barred owl removal program that is not yet in place and too uncertain to rely on.

5. That the January 15, 2021, Final Rule relied upon a determination by the

Secretary that the exclusions will not result in the extinction of the northern spotted owl, and that the determination was not supported by information in the record and is otherwise inconsistent with the ESA.

6. That the January 15, 2021, Final Rule inadequately explained a change in our prior findings that areas designated on lands managed under the O&C Act were essential to the conservation of the species.

Some commenters supported the January 15, 2021, Final Rule, opposed the delay in its effective date, and sought no further delay in the exclusions from critical habitat. The American Forest Resource Council (AFRC); Lewis and Skamania Counties, Washington; and Douglas County, Oregon, commented that the delay of the effective date is unlawful in that we did not provide the public with notice and an opportunity to comment. These commenters also assert that the Service did not provide a sound rationale for applying the ''good cause'' exceptions to providing notice and the opportunity to comment and for making the Delay Rule effective immediately rather than in 30 days pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), respectively. Further, they commented that the Delay Rule fails to address the effects to regulated industry and the public, including AFRC, and delays providing the economic, safety, and environmental benefits of the January 15, 2021, Final Rule. Specifically, AFRC stated that the delay violates the sustained-yield mandate of the O&C Act by placing those areas substantially off-limits for timber harvesting and interferes with fuels reduction projects, thereby increasing the risk of loss of life, property, and habitat. These commenters disputed that a ''logical outgrowth'' problem exists with the January 15, 2021, Final Rule and stated that the changes in that final rule would have been reasonably anticipated by our request for comments in our August 11, 2020, Proposed Rule on additional exclusions we should consider. Additionally, they commented that the January 15, 2021, Final Rule should go into effect immediately because the 2012 final rule was illegal and irrational, citing concerns regarding economic impacts to communities dependent on timber harvest receipts and their assertion that areas of non-habitat were designated in the 2012 final rule.

The Confederated Tribe of the Coos, Lower Umpqua, and Siuslaw Indians (CTCLUSI) supported the revised designation that excluded Tribal lands. The Tribe expressed concern that a delay of the effective date will cause the Tribe to alter its forest management planning efforts due to the current designation of critical habitat on lands conveyed to Tribal management in 2020 from BLM. The CTCLUSI expressed that this action threatens its self-governance and Tribal sovereignty and has economic impacts on the Tribe. The CTCLUSI and Bureau of Indian Affairs expressed that Secretarial Order 3206 should be followed and that it supports the exclusion of the tribally managed lands.

Conservation groups, on the other hand, urged the Service to delay implementation of the January 15, 2021, Final Rule for 240 days until the Service revised or eliminated the rule entirely. In general, most of the comments opposed the exclusions from designated critical habitat determined in the January 15, 2021, Final Rule. Commenters raised concerns about whether the most-current scientific information provides a basis for excluding 3.4 million acres of critical habitat especially given our recent finding that the species warrants reclassification as endangered—that is, that the species is in danger of extinction throughout all or a significant portion of its range. Other comments opposing the exclusions in the January 15, 2021, Final Rule identified concerns given the increased role of the invasive barred owl in competing for the same habitat with northern spotted owls and the impact of recent wildfires in further diminishing available habitat generally. These commenters asserted that the Service should be considering expanding the areas designated as critical habitat, not reducing them. Additionally, commenters expressed concerns about relying on a barred owl removal program to support the exclusions when a large-scale barred owl removal program is likely not feasible; therefore, habitat protections and other recovery actions should remain a priority. One commenter stated that the phrase in the January 15, 2021, Final Rule that ''the Secretary has not concluded that these exclusions will result in the extinction of the species'' is vague, creates uncertainty, and fails to address the declining population of northern spotted owls.

In terms of the process for developing the January, 15, 2021, Final Rule, a few commenters felt the exclusions proposed in the August 11, 2020, Proposed Rule, even though a much smaller and narrower proposal, gave sufficient notice that the final exclusions could be larger and could include areas throughout the range of the owl. Many others strongly disagreed, noting the huge increase in excluded areas, and the expansion beyond just the original proposal of certain BLM-managed lands and Tribal lands in Oregon. The Washington Department of Fish and Wildlife and California Department of Fish and Wildlife also disagreed with the expanded exclusions and commented that they were not aware that exclusions might occur within their States. Commenters also noted that there were entirely new rationales for the final exclusions that were not included in the August 11, 2020, Proposed Rule, and so they had no opportunity to comment on these.

Commenters expressed that the Secretary's statement in the January 15, 2021, Final Rule that timber harvest may occur at longer intervals was speculative and unlikely to occur given current timber harvest practices. Another commenter expressed concern that the excluded areas included northern spotted owl core areas and home ranges, particularly with the BLM Harvest Land Base.

Conservation groups stated that the Service failed to conduct an economic analysis on the critical habitat revision and consider potential adverse economic impacts to communities, especially in relation to the environmental benefits associated with designated critical habitat, and that the Service instead relied on the 2012 economic analysis. These commenters also stated that the Service erred in concluding that the benefits of exclusion outweigh the benefits of inclusion and incorrectly justified its decision in part based on the O&C Act, noting longstanding Department and Solicitor legal interpretations that the designation of critical habitat does not preclude the sustained-yield timber management of O&C lands consistent with the requirements of the O&C Act (77 FR 72010, December 4, 2012). These commenters noted the Service's previous conclusions that the O&C lands and matrix lands significantly contribute to the conservation of the northern spotted owl, that recovery of the owl cannot be attained without the O&C lands, and that our modeling showed that not including many of the matrix lands in the critical habitat network resulted in a significant increase in the risk of extinction.

Conservation groups stated that the Service's conclusion that it may exclude any and all areas from a designation up until the point that doing so would result in the extinction of the species is inconsistent with the ESA in that this perception ignores the vital role that critical habitat plays in the recovery and survival of the species and is not what Congress intended. These commenters

also stated that the January 15, 2021, Final Rule fails to adopt the ''precautionary principle'' and it does not give the species the ''benefit of the doubt'' as the ESA is designed to do.

Discussion

Based on the comments received to date, we believe there are sufficient concerns about the merits of the January 15, 2021, Final Rule, as well as the procedural steps we took to issue it, that warrant our further consideration and action. In particular, commenters have asserted that our January 15, 2021, Final Rule failed to consider the best available science in making the requisite finding that the exclusions will not result in the extinction of the species. New information, available after the January 15, 2021, Final Rule was finalized, suggest this may be the case. As noted in the January 15, 2021, Final Rule, our findings regarding the extinction issue were summarized in the rule and further described in a memorandum from the Director to the Secretary (FWS 2021a). That memorandum relied in part on information requested and received from the Service's field office in Oregon, which has the first-line responsibility for managing issues related to the species. The field office, however, upon seeing the final Director's memo, identified areas where the Director's memo was inaccurate or unclear in terms of its characterization of the scientific information and detailed those concerns in a followup memo (see FWS 2021b). Our concerns represented in that followup memo (FWS 2021b) align with the Service's and Department's Code of Scientific and Scholarly Conduct (305 DM 3.2; 212 FW 7), which obligates Service staff to use the ''most appropriate, best available, high quality scientific and scholarly data and information'' to inform sound decisionmaking.

Given the potential errors in the January 15, 2021, Final Rule, as well as concerns that the rule's implementation will hasten the decline of this imperiled species and diminish its prospects for recovery, we have concluded that the January 15, 2021, Final Rule should not become effective before our further review and reconsideration is completed and we have had the opportunity to fully address the issues summarized herein. As discussed further below, to do otherwise risks the removal of that habitat in the interim. Giving the benefit of the doubt to the species when designating critical habitat reflects the institutionalized caution embedded in the ESA, which gives primacy to the protection of listed species. See *Tennessee Valley Authority* v. *Hill,* 437 U.S. 153, 174 (1978) (in enacting the ESA, it is ''beyond doubt that Congress intended endangered species to be afforded the highest of priorities''). Also as discussed below, to allow the exclusions to become effective while we undertake additional rulemaking to revise or withdraw them will cause confusion and disruption with Federal agencies in the ESA section 7(a)(2) consultation process. The comments expressing concern with the delay in the implementation of the January 15, 2021, Final Rule focused in particular on the perceived impacts to timber production from Federal lands and effects that may flow from that. These commenters assert that the 3.4 million acres of exclusions were either appropriate or legally required under the O&C Act, and that further delay will continue to hamper Federal agency efforts to authorize and implement timber harvest on Federal lands. As we noted in the January 15, 2021, Final Rule, we acknowledge this perception of the impact of the critical habitat designation for the northern spotted owl on timber production. However, as noted in our January 15, 2021, Final Rule, ''the implementation of critical habitat occurs within a complex set of factors, including volatility in global demand for wood products, general timber industry transformation, and existing regulatory and statutory requirements, among other factors'' (IEc 2020). See our discussion of economic issues in the January 15, 2021, Final Rule (at 86 FR 4825–4828) and in the December 4, 2012, final critical habitat rule (at 77 FR 71945–71947). Since the species listing itself influences the impacts to timber production, we determine the economic effects that result from the critical habit designation beyond the economic effects that result from listing and other regulations (50 CFR 17.90(a)). The courts have upheld this approach, also referred to as an ''incremental impacts analysis,'' to determine the economic impacts of critical habitat designations (*e.g., Arizona Cattle Growers' Ass'n* v. *Salazar,* 606 F.3d 1160 (9th Cir. 2010)).

Even with the listing of the northern spotted owl and the designation of critical habitat on Federal lands, timber continues to be produced from Federal lands within the areas designated. For example, between 2013 and 2018, the Service completed section 7 consultations on over 100,000 acres (40,469 hectares) of timber sales within the critical habitat designation across Washington, Oregon, and California (USFWS, unpub. data). And, as described in the response to Comment 21(*b*) in the January 15, 2021, Final Rule (at 86 FR 4827), average annual timber harvest on Federal lands in the range of the northern spotted owl has increased significantly in the years after the 2012 critical habitat designation, when compared with such harvest during the preceding decade.

In regard to concerns raised about limitations on fuels management and increased risk of wildfire, in the 2012 critical habitat rule the Service accounted for the drier provinces and parts of the range and recognized that forest management needs to be tailored to the forest type and climatic conditions, including the dry forests in California and the Eastern Washington Cascades. As part of the critical habitat rule, the Service expressly encouraged land managers to consider implementation of active forest management, using ''ecological forestry'' practices, and to restore natural ecological processes where they have been disrupted or suppressed (*e.g.,* natural fire regimes). This flexibility is provided to reduce the potential for adverse impacts associated with commercial timber harvest when such harvest is planned within or adjacent to critical habitat and consistent with land use plans (USDI FWS 2012b: 77 FR 71877, December 4, 2012). The Service recognizes that land managers have a variety of forest management goals, including maintaining or improving ecological conditions where the intent is to provide long-term benefits to forest resiliency and restore natural forest dynamic processes (USDI FWS 2011, p. III–45). The Service has consulted on fuels reduction, stand resiliency, and pine restoration projects in dry forest systems, for example in the Klamath Province of southern Oregon, that promote ecological restoration and are expected to reduce future losses of spotted owl habitat and improve overall forest ecosystem resilience to climate change. We concluded in these consultations that the actions do not adversely modify critical habitat. Many of these treatment areas include reduction in forest canopy to obtain desired silvicultural outcomes and meet the purpose and need of the project. In sum, the critical habitat designation supports and encourages active management of forests to address catastrophic wildfire risk where planned appropriately and informed by the best available science in order to protect communities from property losses, restore forest health, and for the long-term recovery of the owl.

Regarding the impact of a delay on Tribal activities on forest lands, the Service is available to assist Tribes in

developing their forest management plans and any related consultation needs to address management and economic concerns. The Service has been working with the Tribes to address their concerns since the initial proposal to exclude areas from the critical habitat designation, and that has continued through the time of the March 1, 2021, Delay Rule. The Service is committed to upholding Secretarial Order 3206.

Lastly, with regard to comments received that the failure to implement the January 15, 2021, Final Rule precludes the BLM and USFS from implementing their obligations under the O&C Act, as we noted in the January, 15, 2021, Final Rule, there is ongoing litigation challenging BLM's management of O&C lands under the 2016 Resource Management Plans (RMPs) (BLM 2016a, 2016b). One district court has concluded that the 2016 RMPs (including their consideration of the ESA) do not conflict with the O&C Act, see *Pac. Rivers* v. *U.S. Bureau of Land Mgmt.,* No. 6:16–CV–01598–JR, 2019 WL 1232835 (D. Or. Mar. 15, 2019), aff'd sub nom. *Rivers* v. *Bureau of Land Mgmt.,* 815 F. App'x. 107 (9th Cir. 2020). In a separate proceeding, the U.S. District Court for the District of Columbia, in a consolidated set of cases, found that the BLM RMPs violate the O&C Act because BLM excluded portions of O&C timberland from sustained yield harvest (*i.e.,* the BLM allocated some timberlands to reserves instead of the Harvest Land Base); see, *e.g., American Forest Resource Council et al.* v. *Hammond,* 422 F. Supp. 3d 184 (D.D.C. 2019). The parties briefed the court on the appropriate remedy, but the court has not yet issued an order. In the absence of a remedy order or resolution of any further proceedings in that litigation, we decline to speculate on the outcome as a reason to implement the January 15, 2021, Final Rule immediately.

In sum, substantial issues have been raised that our January 15, 2021, Final Rule may be detrimental to the conservation of the northern spotted owl, a species we recently found warrants reclassifying as an endangered species in danger of extinction throughout its range. There are also substantial concerns that we failed to provide the public with adequate notice and opportunity to review and comment on the extent of, and reasons for, the change from our proposed exclusion of approximately 200,000 acres (80,937 hectares) to the approximately 3.4 million acres (1.3 million hectares) excluded by our January 15, 2021, Final Rule. This additional delay to consider these exclusions and conduct rulemaking to either revise or withdraw them will not result in a long-term or irreversible economic impact; timber harvest already scheduled to occur on BLM and USFS land will continue to proceed as planned. We are, therefore, further delaying the effective date of the January 15, 2021, Final Rule that revised the designation of critical habitat for the northern spotted owl to give us the needed time to fully consider questions of law, policy, and fact in regard to that final rule, and allow us to take action to remedy procedural and substantive defects identified in order to provide for conservation of the species and avoid undue disruption in the required consultation process with Federal agencies. The effective date of the January 15, 2021, Final Rule, as modified by the March 1, 2021, Delay Rule (86 FR 11892), was April 30, 2021. With this document, we are delaying the effective date of the January 15, 2021, Final Rule, until December 15, 2021. During this time, we expect to complete our review and reconsideration of the January 15, 2021, Final Rule, and to undertake and complete new notice and comment rulemaking as needed to address the substantive and procedural questions raised.

We note that the Office of Management and Budget deemed the January 15, 2021, Final Rule to be economically significant under Executive Order 12866. However, we do not consider this delay rule to be economically significant.

Good Cause Under the Administrative Procedure Act

In our March 1, 2021, Delay Rule, we invited public comments on the impact of the initial delay of the January 15, 2021, Final Rule. We also expressly sought comment on whether we should extend the effective date of the January 15, 2021, Final Rule beyond April 30, 2021, and, if so, for how long and what, if any, the impacts of that delay would be. In addition, we identified the legal authority under which we promulgated it, and we described the subjects and issues involved. As a result, ''[f]ormal labels aside, the [March 1, 2021, Delay rule] contained all of the elements of a notice of proposed rulemaking as required by the APA'' (*Little Sisters of the Poor Saints Peter and Paul Home* v. *Pennsylvania,* 140 S. Ct. 2367, 2384 (2020)). We have now considered and addressed in this final rule the comments regarding the initial delay and the potential impacts of an additional delay. As a result, seeking additional public comment on the delay until December 15, 2021, would be unnecessary and duplicative, and is not required by the APA. It is, therefore, not necessary to assess whether this second delay in the effective date of the January 15, 2015, Final Rule meets the ''good cause'' exceptions to notice and comment rulemaking of the APA. Nonetheless, out of an abundance of caution, we again review our action here against the good-cause exception. We also in this section evaluate whether we have good cause to make this final rule effective immediately, rather than make it effective in 30 days.

Our implementation of this action extending the effective date of the January 15, 2021, Final Rule from April, 30, 2021, to December 15, 2021, without opportunity for further public comment, effective immediately upon publication in the **Federal Register**, is consistent with the good-cause exceptions provided in the APA. Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), we have determined that good cause exists to forgo the requirements to provide additional prior notice and an opportunity for public comment on this delay in the effective date of the January 15, 2021, Final Rule, and to make this action announcing the delay effective immediately upon publication.

Under the totality of the circumstances presented here, notice and comment would be unnecessary, as well as impracticable and contrary to the public interest, because the public has had notice of and opportunity to comment on further extension of the effective date of the January 15, 2021, Final Rule, and taking the time to provide for additional public notice and comment would thwart the conservation purposes of the ESA, create confusion and disruption for Federal agencies in implementing the ESA section 7(a)(2) consultation process, and prevent the Service from performing its functions.

First, additional notice and comment is unnecessary. As noted above, our March 1, 2021, Delay Rule expressly provided notice that we might further delay the effective date, and also sought public comment on that possibility. We received public comments on that question and considered them in this final rule. As also noted above, this is all that the APA requires. But even if this process did not constitute technical compliance with the APA, and a showing of good cause were required, good cause exists here because further public notice and additional comment is unnecessary given the opportunity provided pursuant to the March 1, 2021, Delay Rule.

Second, additional notice and comment is also impractical and contrary to the public interest. As noted

in our March 1, 2021, Delay Rule (86 FR 11892), we were reviewing whether the determinations made in the January 15, 2021, Final Rule were a ''logical outgrowth'' of the August 11, 2020, Proposed Rule. In addition, there has been substantial litigation in the past on critical habitat designations for this species, and we have now in fact been sued regarding the legality of the January 15, 2021, Final Rule. As identified above, we conclude that there are likely procedural and substantive defects in the January 15, 2021, Final Rule. Our agency's ''due and required'' execution of its functions under the ESA would be unavoidably prevented if we allow the effective date to be triggered without undertaking efforts to address and rectify the defects in the January 15, 2021, Final Rule. *See* S. Doc. No. 248, 79th Cong., 2d Sess. At 200 (1946). That is, if the January 15, 2021, final exclusions from designated critical habitat of more than 3 million acres of northern spotted owl habitat become effective, there is the potential that we will not have met our obligations under the ESA to provide required protections for listed species. Specifically, once the exclusions become effective, Federal agencies will no longer be required to consult with the Service under section 7(a)(2) of the ESA to determine if agency actions will result in the destruction or adverse modification of that formerly designated habitat. Federal agencies could proceed to undertake (or to authorize others to undertake) activities that would remove that habitat before the Service could reconsider whether those exclusions were appropriate in the first place. Because the habitat is defined by forested stands, particularly of older trees, it cannot be replaced for many decades once removed. Even if the January 15, 2021, Final Rule were to become effective only briefly such that immediate implementation of habitat-removal activities would be unlikely or limited, having areas previously designated be excluded, then reconsidered and potentially included again, would cause confusion and disruption in the section 7(a)(2) consultation process, again impeding the Federal agencies from executing their conservation functions, and also affecting third parties reliant on Federal agency activities.

In designated critical habitat for the northern spotted owl in Washington, Oregon, and California, at least 35 separate section 7 consultations have been completed or are underway for ongoing and proposed Federal actions addressing a range of activities—including both forest management to improve fire resiliency and oversee commercial timber harvest. If the 3.4 million acres (1.3 million hectares) were excluded from the critical habitat designation on April 30, 2021, those Federal agencies would no longer be required to address whether the activities destroy or adversely modify the excluded critical habitat and could proceed with such activities. If the Service, following its review of the January 15, 2021, Final Rule, again modifies the exclusions or withdraws them through rulemaking, these Federal agencies would need to reinitiate section 7 consultation to determine if their ongoing activities impact the revised critical habitat, and would be constrained by section 7(d) of the ESA from certain ''irreversible or irretrievable commitment of resources'' during the consultation period. This kind of uncertainty in knowing what areas are within or outside of the critical habitat designation creates project delays that can be avoided by maintaining the status quo of the current designated habitat while the Service reconsiders the January 15, 2021, exclusions.

The ESA does not require exclusion of areas from critical habitat—the authority to exclude particular areas from designations of critical habitat under the second sentence of section 4(b)(2) of the ESA is in the discretion of the Secretary. In contrast, other duties relating to critical habitat are mandatory: The duty for the Service to designate critical habitat (16 U.S.C. 1533(a)(3)) and the duty of Federal agencies to ensure that their actions are not likely to result in the destruction or adverse modification of critical habitat (16 U.S.C. 1536(a)(2)). Therefore, a delay in the effective date of the January 15, 2021, Final Rule excluding areas from critical habitat for the northern spotted owl does not delay compliance with a mandate of the ESA. Delaying the effective date of the January 15, 2021, Final Rule, which purported to exercise that discretionary section 4(b)(2) authority, simply preserves the status quo while we undertake additional review and undertake additional actions as needed to ensure compliance with the legal mandates and conservation purposes of the ESA.

In sum, we find that the totality of the circumstances here—the fact that notice and comment have now occurred with regard to a delay in the effective date of the January 15, 2021, Final Rule; the now-pending judicial review; our concerns about substantive defects in the rule and the associated potential to affect the Service's execution of its statutory functions by having an impact on ESA-listed species; the likelihood of a ''logical outgrowth'' deficiency in the January 15, 2021, Final Rule; and concerns expressed by affected States regarding a lack of opportunity to comment, among other issues—indicate that there is good cause to forgo notice and comment procedures because it is unnecessary, impracticable, and contrary to the public interest for the Service to provide another notice and opportunity to comment on a further extension of the effective date for the January 15, 2021, Final Rule.

We also find that there is good cause to make this rule effective immediately instead of waiting until 30 days after publication for it to become effective. The APA's legislative history indicates that the purpose of the notice requirement at 5 U.S.C. 553(d)(3) is to ''afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of rules may prompt.'' S. Rep. No. 752, 79th Cong., 1st Sess. 201 (1946) and H.R. Rep. No. 1980, 79th Cong., 2nd Sess. 259 (1946). See, *e.g., Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1485 (9th Cir. 1992). However, the APA provides an exception to this 30-day grace period for good cause (5 U.S.C. 553(d)). There is good cause to allow this extension of the January 15, 2021, Final Rule's effective date to go into effect immediately because it preserves the status quo and there is no change to which parties would need time to adjust their behavior. Delaying the effective date provides certainty for the Federal agencies involved in ESA section 7 consultations during the delay period while the Service addresses issues with the January 15, 2021, Final Rule. The Service is committed to ensuring transparency and providing certainty in the adequacy and finality of the January 15, 2021, Final Rule. Thus, it would be contrary to the public interest for the January 15, 2021, Final Rule to go into effect, with its accompanying changes in analyses of impacts, while the January 15, 2021, Final Rule remains under review and subject to revision or withdrawal. The potential for fluctuating between the presence and absence of a requirement for Federal agencies to consult would lead to uncertainty and confusion and a potential and unnecessary increase in administrative costs.

Further, if this rule extending the effective date were itself not to become effective for 30 days, it would mean that the January 15, 2021, Final Rule would go into effect on April 30, 2021. That effective date would create the same issues as discussed in the preceding

paragraphs, *i.e.,* thwart the conservation purposes of the ESA, create confusion and disruption for Federal agencies in implementing the ESA section 7(a)(2) consultation process, and prevent the Service from performing its functions under the Act.

In the March 1, 2021, Delay Rule, the Service anticipated that a second delay might be necessary (see 86 FR 11892). For the reasons stated above, we conclude that we have good cause to issue this final rule, effective immediately, extending the effective date of the January 15, 2021, Final Rule until December 15, 2021.

References Cited

A list of the references cited in this document may be found at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0050.

Authority

The authorities for this action are 5 U.S.C. 553 and 16 U.S.C. 1531–1544 unless otherwise noted.

Martha Williams

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 210422–0085]

RIN 0648–BI09

Atlantic Highly Migratory Species; Modification to the North Atlantic Swordfish and Shark Retention Limits for Certain Permit Holders and Add Inseason Adjustment Authorization Criteria

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

ACTION: Final rule.

SUMMARY: NMFS is adjusting the current regulations for North Atlantic swordfish and shark retention limits for certain permit holders in U.S. Atlantic and Caribbean waters. Specifically, this action will modify swordfish retention limits for highly migratory species (HMS) Commercial Caribbean Small Boat permit holders, Swordfish General Commercial permit holders, and HMS Charter/Headboat permit holders with a commercial endorsement on a non-for hire (*i.e.,* commercial) trip. This action will also modify the shark retention limits for HMS Commercial Caribbean Small Boat permit holders. Additionally, this action will add regulatory criteria for inseason adjustment of swordfish and shark retention limits for the HMS Commercial Caribbean Small Boat permit. The changes are expected to provide fishermen with greater flexibility, establish greater consistency across regions, and improve the efficiency of swordfish and shark management.

DATES: This final rule is effective on June 1, 2021.

ADDRESSES: Copies of the supporting documents, including the Final Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) for this action, and the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are available from the HMS website at: *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species*.

FOR FURTHER INFORMATION CONTACT: Nicolas Alvarado at 727–824–5399, Delisse Ortiz at 240–681–9037, or Steve Durkee at (202) 670–6637.

SUPPLEMENTARY INFORMATION: Atlantic HMS are managed under the dual authorities of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The implementing regulations for the 2006 Consolidated Atlantic HMS FMP and its amendments are at 50 CFR part 635.

Background

In response to requests from HMS Advisory Panel members and other members of the public, NMFS undertook this rulemaking to provide consistency between the three open access swordfish handgear permits, all of which allow similar gears to be used within U.S. Atlantic and Caribbean waters, and to provide increased fishing opportunities for sharks in the U.S. Caribbean. Overall, this final rule should increase administrative efficiencies and increase management flexibility by managing the swordfish commercial open access permits in the different regions similarly. Additionally, this final rule should improve the efficiency of swordfish and shark management in all regions, while continuing to prevent overfishing.

The proposed rule published on April 27, 2020 (85 FR 23315). The details of this rulemaking can be found in that proposed rule, and are not repeated here. Additional information can be found in the Final EA supporting this action, along with the 2006 Consolidated HMS FMP and its amendments [see **ADDRESSES**].

The comment period for the proposed rule closed on June 26, 2020. NMFS held two public hearings via webinar, and consulted with the HMS Advisory Panel. In addition to the comments received during the webinars and from the HMS Advisory Panel, NMFS received 29 written comments, including comments from the Puerto Rico Department of Natural Resources, Florida Fish and Wildlife Conservation, environmental non-governmental organizations, recreational and commercial fishermen, and the general public. The comments received, and responses to those comments, are summarized below in the Response to Comments section.

After considering the management goals of this final action and public comments, NMFS is adjusting some of the proposed measures. Specifically, for swordfish, this final rule will increase the default retention limit to 18 swordfish per vessel per trip for the HMS Commercial Caribbean Small Boat and Swordfish General Commercial permit holders, and HMS Charter/Headboat permit holders with a commercial endorsement on a non-for hire (*i.e.,* commercial) trip in all regions except for the Florida Swordfish Management Area, which will remain at 0 swordfish per vessel per trip. This measure is a change from the proposed retention limit of six swordfish per vessel per trip for all regions except for the Florida Swordfish Management Area. For sharks, this rule will establish a default retention limit of three non-prohibited smoothhound sharks, non-blacknose small coastal sharks, or large coastal (other than hammerhead, silky, and sandbar) sharks (combined) per vessel per trip for the HMS Commercial Caribbean Small Boat permit holders. This measure is a change from the proposed default retention limit of three smoothhound and/or tiger sharks (combined) per vessel per trip for the HMS Commercial Caribbean Small Boat permit holders. Lastly, this action will establish inseason adjustment procedures for the HMS Commercial Caribbean Small Boat permit swordfish and shark retention limits. This measure is unchanged from the proposed rule, and will allow NMFS to make inseason adjustments to the retention limits, as is already allowed for other swordfish and shark permits. These final actions are expected to provide fishermen with

greater flexibility, establish greater consistency across regions, and improve the efficiency of swordfish and shark management, while continuing to prevent overfishing.

Response to Comments

NMFS received 29 written comments from commercial and recreational fishermen, Regional Fishery Management Councils (FMCs), states and territories, environmental non-governmental organizations, scientists, the Atlantic HMS Advisory Panel members, and other interested parties during the public comment period. All written comments can be found at *http://www.regulations.gov.* Comments are summarized below by major topic, together with NMFS' responses.

A. Retention Limit Inseason Adjustment Process (Alternatives A1–A3)

Comment 1: NMFS received multiple comments stating that NMFS should prefer the No Action alternative (Alternative A1) regarding the inseason adjustment process. In addition, the Puerto Rico Department of Natural and Environmental Resources (PR DNER stated that the inseason retention limit adjustment process should not be changed because of the lack of data in the U.S. Caribbean region.

Response: NMFS disagrees that a lack of data in the U.S. Caribbean region negates the ability to adopt inseason adjustment criteria. Alternatives A2 and A3 simply establish inseason adjustment criteria. Any inseason adjustment to the retention limits would be based upon the best scientific information available, consistent with the Magnuson-Stevens Act and other applicable laws. These data include the relevant shark and swordfish status information, dealer reports, and U.S. Caribbean trip ticket data. Similarly, if NMFS maintains the No Action alternative and adjusts the retention limit via a framework action, NMFS would use the same data. Under NMFS' preferred alternatives A2 and A3, the adjustment process would be more flexible and the retention limits could be adjusted more quickly than would be done under the existing process. These alternatives could result in an increased likelihood that the retention limits would be adjusted as needed throughout the year, reducing administrative costs and potentially providing more timely management changes to swordfish and shark fishermen. This flexibility in reacting to the available data can assist in maintaining sustainable stocks and ensuring quotas are not exceeded.

Additionally, National Standard 3 requires that, to the extent practicable, an individual stock of fish be managed as a unit throughout its range and interrelated stocks of fish be managed as a unit or in close coordination. The preferred alternatives (Alternatives A2 and A3) make management consistent throughout the range of the swordfish and shark stocks within the U.S. Exclusive Economic Zone (EEZ) as well as in state waters, because Federal HMS permit holders must comply with Federal regulations no matter where they fish, unless a state has measures that are more restrictive.

B. Swordfish Retention Limits (Alternatives B1–B4)

Comment 2: NMFS received suggestions regarding potential ways to adjust the swordfish retention limit in order to ensure the swordfish quota is not exceeded. One suggestion was starting with an 18 fish per vessel per trip retention limit for all affected permit holders and reducing that to six fish per vessel per trip when 80 percent of the quota is reached. Another suggestion was a 15 swordfish retention limit that drops to six fish once 50,000 lb of swordfish has been landed. Another suggestion was a 25-mt set-aside quota for the affected permit holders; the retention limit would be reduced to zero once that set-aside quota was reached.

Response: Currently, before making any inseason adjustments to regional retention limits for the Swordfish General Commercial permit, NMFS considers the inseason adjustment criteria and other relevant factors codified in 50 CFR 635.24(b)(4)(iv)(A) through (G). NMFS uses these criteria when determining whether retention limits need to be modified in the middle of a fishing season. Under preferred Alternative A2, NMFS would adopt identical inseason adjustment criteria to allow for the adjustment of the regional swordfish retention limit for the HMS Commercial Caribbean Small Boat permit as well. While the suggestions provided are not explicitly incorporated into the inseason adjustment criteria, they are consistent with the factors NMFS considers before making any inseason adjustments. For instance, if NMFS determines that the retention limit for Swordfish General Commercial, HMS Commercial Caribbean Small Boat, and/or HMS Charter/Headboat permit holders could lead to an overharvest of the swordfish quota or lead to limited opportunities for vessels in other regions, as indicated under criteria C (the estimated amounts by which quotas for other categories of the fishery might be exceeded) or criteria F (effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota), NMFS can reduce the retention limit inseason to reduce the rate of landings under the inseason adjustment criteria in this final action. Based on current domestic quota utilization trends and the fact that the swordfish quota has not been fully utilized since 2003, NMFS does not see a reason to create a separate quota category at this time.

Comment 3: NMFS received comments supporting an increase in the swordfish retention limit to 18 fish per vessel per trip for the Swordfish General Commercial, HMS Commercial Caribbean Small Boat, and HMS Charter/Headboat permit holders. Commenters noted that the United States does not fully harvest the swordfish quota and that increasing the swordfish retention limit for these vessels could better utilize the quota. Commenters, including the Florida Fish and Wildlife Conservation Commission, also supported maintaining the zero swordfish retention limit in the Florida Swordfish Management Area.

Response: As a result of public comments and further consideration of the primary objectives of this rulemaking, NMFS changed the preferred swordfish retention limit alternative from Alternative B2 to Alternative B4. Under Alternative B4, the default swordfish retention limit for HMS Commercial Caribbean Small Boat permit holders, and Swordfish General Commercial, and HMS Charter/Headboat permit holders outside of the Florida Swordfish Management Area would be 18 swordfish per trip. In the Florida Swordfish Management Area, the default swordfish retention limit would be zero fish for Swordfish General Commercial and HMS Charter/Headboat permit holders. NMFS noted in the proposed rule that, with regard to Alternatives B3 and B4, it was not yet clear that Swordfish General Commercial permit holders or HMS Commercial Caribbean Small Boat permit holders would benefit from a retention limit range of 0 to 18 swordfish per vessel per trip or if a default retention limit of 6 to 18 swordfish per trip was appropriate for the U.S. Caribbean region. Public comments indicated that a retention limit range of 0 to 18 swordfish per vessel per trip and a default retention limit of 18 swordfish per trip for the U.S. Caribbean region would be beneficial and appropriate for Swordfish General Commercial permit holders and HMS Commercial Caribbean Small Boat permit holders.

The change in preferred alternatives from B2 to B4 was based on five considerations. First, one of the goals of this rulemaking is to provide consistency in swordfish retention limits among the three open access swordfish handgear permits. Thus, if an increased default retention limit for one permit is implemented, a similar default retention limit increase for the other permits would be implemented, provided such a change is also supported. Second, the North Atlantic swordfish stock is not overfished nor is it experiencing overfishing, and therefore the stock can support higher removal levels within established quotas without jeopardizing the sustainability of the stock. Third, an increase in the retention limit to 18 swordfish per vessel per trip for Swordfish General Commercial and HMS Charter/Headboat permit holders outside of the Florida Swordfish Management Area could provide additional fishing opportunities because trips that target swordfish farther offshore will be more likely to be profitable due to the higher number of swordfish that could be landed and sold. Fourth, the HMS Commercial Caribbean Small Boat (CCSB) permit is currently underutilized by commercial fishermen in the region, and a greater retention limit of swordfish that matches the retention limit of other permits could incentivize use of the HMS Commercial Caribbean Small Boat permit. If more fishermen in the region obtain the permit and comply with the reporting requirements, NMFS and territorial governments might receive better, more complete landings information. Fifth, this rule is also finalizing adaptive management measures (Alternative A2) that would allow NMFS to quickly adjust swordfish retention limits regionally (down to zero fish, if necessary) in response to landings information.

Comment 4: NMFS received comments that swordfish and shark retention limits (Alternatives C1–C4) should not be increased until affected vessels are required to report catch in logbooks and have a vessel monitoring system (VMS) unit on board.

Response: While logbooks and VMS units can provide important information for sustainable management of HMS, their application may not be appropriate in all fisheries. In the case of HMS Commercial Caribbean Small Boat permit holders, revenues are not high enough to justify the high price of a VMS unit, which has an initial cost of over $3,000 in addition to monthly and annual service fees. The HMS Commercial Caribbean Small Boat permit was implemented to facilitate improved HMS landings data. While a logbook could provide important information in the future, the near-term priority is to gather basic landings data to help track HMS fishing mortality. Furthermore, additional logbook and VMS requirements could disincentivize fishermen from obtaining the HMS Commercial Caribbean Small Boat permit, which would be counterproductive to the permit's purpose. Currently, Commercial Caribbean Small Boat permit holders are required to report landings through territorial reporting programs.

Similarly, revenue in the Swordfish General Commercial and commercial HMS Charter/Headboat swordfish fisheries do not justify the high cost of a VMS unit. With an initial cost of $3,000 (not including monthly and annual service fees), a fisherman would need to sell 615 lb dw of swordfish to cover the cost (assuming average ex-vessel price of $4.88 per pound of swordfish). The current swordfish minimum length is equivalent to a 33 pound dressed weight fish, thus, the fishermen would need to land and sell 19 swordfish just to cover the cost of the VMS unit (615 lb dw/33 lb minimum size = 18.6), which is more than the maximum retention limit. Thus, a fisherman would need to take approximately two trips just to cover the cost of the VMS unit. Data indicate that between 2014 and 2020, Swordfish General Commercial permit holders who retain swordfish conduct on average 29 trips per year. During that same time period, on average, approximately 15 vessels (out of 665 permitted vessels) were active annually in the fishery. Thus, the typical Swordfish General Commercial permit holder engages in fewer than two trips per year, and the cost of a VMS unit would exceed their annual ex-vessel revenue. The Agency expects this to be the case with HMS Commercial Caribbean Small Boat permit holders too, but does not have the data necessary to perform an analogous economic analysis. As participation in these fisheries increases, data collection methodologies will be reassessed.

Regarding logbook requirements, NMFS continues to monitor the fisheries and may increase logbook reporting requirements in the future, especially given the move towards electronic logbooks throughout the Agency and overlapping requirements between regions. For example, effective January 5, 2021, all South Atlantic Fishery Management Council and Gulf of Mexico Fishery Management Council Charter/Headboat permit holders are required to report in an electronic logbook (July 21, 2020; 85 FR 44005). Gulf of Mexico Council permit holders will also be required to submit hail in and hail out declarations via a VMS or VMS-type device that is capable of logging location data, although that requirement is delayed indefinitely per the July 21, 2020 final rule (85 FR 44005). Any HMS Charter/Headboat permit holders that are also permitted in for-hire South Atlantic or Gulf of Mexico Council fisheries will be required to abide by these reporting requirements.

Comment 5: NMFS received multiple comments stating that the swordfish retention limit for HMS Commercial Caribbean Small Boat permit holders should not be increased above six fish per trip because the vessels engaged in that fishery cannot safely carry more than six swordfish. One commenter suggested that vessels too small to carry six or more swordfish may transfer the fish to another vessel while at sea, and that such transfers could encourage excessive landings and reduce prices in the local markets, causing economic harm. Other commenters stated that some vessels can safely hold more than 6 swordfish and that vessel safety weight limits should be left to the discretion of the vessel operator.

Response: At the proposed rule stage, NMFS preferred the alternative that would increase the retention limit range to zero to six swordfish per vessel per trip and the default retention limit to six swordfish per vessel per trip, for all three permits, because it was not clear that these permit holders would be able to benefit from a higher retention limit range. NMFS specifically requested public comments on the swordfish retention limits for these permits, and in particular, whether vessels with these permits could support the extra weight of additional swordfish. Public comments indicated that Swordfish General Commercial permit holders, HMS Charter/Headboat permit holders, and HMS Commercial Caribbean Small Boat permit holders would benefit from a retention limit range of 0 to 18 swordfish per vessel per trip, and that a default retention limit of 18 swordfish per trip was appropriate for the U.S. Caribbean region because some vessels can safely hold more than 6 swordfish. After reviewing all the public comments, NMFS feels Alternative B4, setting a retention limit range of 0 to 18 swordfish per vessel per trip and a default retention limit of 18 swordfish per vessel per trip, is the most appropriate alternative to implement. In part, this is because it will give fishermen the greatest opportunity to

harvest the North Atlantic swordfish quota. Additionally, an increase in the default retention limit to 18 swordfish per vessel per trip for Swordfish General Commercial and HMS Charter/Headboat permit holders outside of the Florida Swordfish Management Area could provide additional fishing opportunities, because trips that target swordfish farther offshore will now be profitable. Furthermore, the HMS CCSB permit is currently underutilized by commercial fishermen in the region, and a greater swordfish retention limit that matches the retention limit of other permits could incentivize use of the HMS CCSB permit. If more fishermen in the region obtain the permit and comply with the reporting requirements, NMFS and territorial governments might receive better, more complete landings information. These social, economic, and administrative benefits would not undermine the sustainable harvest of North Atlantic swordfish. As detailed in Section 3.1 of the Final EA, the North Atlantic swordfish stock is not overfished and overfishing is not occurring. The United States has not harvested its domestic allocation of the stock in a number of years and the increased harvest by Swordfish General Commercial permit holders, HMS Charter/Headboat permit holders, and HMS Commercial Caribbean Small Boat permit holders would not jeopardize the sustainability of the fishery. Furthermore, the inseason adjustment criteria give NMFS the ability to adjust retention limits regionally (down to zero fish, if necessary) in response to landings information. The healthy status of the North Atlantic swordfish stock, in concert with the inseason adjustment criteria, provide confidence that Alternative B4 would not lead to overfishing.

Safety at sea is an important consideration in fisheries management, and National Standard 10 compels the Agency to consider the issue. To reduce safety at sea concerns, management measures are specifically designed to give fishermen the flexibility to safely operate their vessels. In HMS fisheries, mitigating safety concerns has not included regulations limiting catch retention based on vessel weight capacity. Instead, retention limits are set based on analyses of ecological and socioeconomic impacts, leaving the weight capacity compliance to the discretion of the vessel operator. Provided compliance with applicable U.S. Coast Guard regulations, the HMS Management Division typically defers to vessel operators as to how best to safely operate their vessels and will do so in this rule as well.

The transfer of any HMS at sea or in port from one vessel to another vessel is expressly prohibited in the regulations at 50 CFR 635.29(a) and 635.71(a)(61).

Comment 6: One commenter expressed concern about setting the swordfish retention limit on a per trip basis because fishermen could take multiple trips per day, increasing the harvest of swordfish. As a solution, the commenter suggested a daily swordfish retention limit.

Response: A daily swordfish retention limit is not needed, because it is unlikely that fishermen would engage in multiple trips per day and gears authorized under the relevant permits are unlikely to catch large numbers of swordfish. As indicated in the response to Comment 3 above, there are limited geographic areas where swordfish are available close enough to shore to allow fishermen to make multiple trips per day. One of these areas is the south Florida region. However, the retention limit in that area under the Swordfish General Commercial permit is zero swordfish. The authorized gears use a limited number of hooks and are constantly tended by fishermen who quickly boat the swordfish once hooked. For these reasons, the gears authorized under these permits are unlikely to catch large numbers of swordfish. Swordfish General Commercial permit holders may use bandit, handline, harpoon, rod and reel, and green-stick gear when targeting and retaining swordfish. HMS Charter/Headboat vessel permit holders with a commercial sale endorsement may use rod and reel and handline under open-access swordfish commercial retention limits when on a commercial trip. HMS Commercial Caribbean Small Boat permit holders may use bandit, handline, harpoon, rod and reel, and buoy gear when targeting and retaining swordfish. Note that buoy gear in the context of HMS fisheries is defined in 50 CFR 635.2 as a fishing gear consisting of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached. The Caribbean Fishery Management Council is currently considering authorizing up to 25 hooks per vertical line in Council managed fisheries. More than two hooks would not be allowed when targeting and retaining swordfish, and NMFS will communicate this difference with targeted outreach in the U.S. Caribbean.

Furthermore, the North Atlantic swordfish stock is not overfished and not experiencing overfishing. The United States has not harvested its domestic allocation of swordfish quota in a number of years, and there is plenty of room under the quota for additional effort and landings. Thus, even if a small number of fishermen are able to make multiple trips per day, the increase in harvest would not impact the sustainability of the North Atlantic swordfish stock.

Comment 7: NMFS received several comments about the stock status of North Atlantic swordfish, including whether a sub-population of swordfish existed in the U.S. Caribbean. These comments questioned whether the North Atlantic swordfish stock was healthy enough to support increased effort and harvest. The PR DNER submitted a comment stating that the size of sexual maturity has decreased for females, which could be a sign of an overfished stock. The PR DNER stated that the retention limit for swordfish should not be increased until Caribbean-specific research is performed on the stock.

Response: The North Atlantic swordfish stock is not overfished and is not experiencing overfishing. The International Commission for the Conservation of Atlantic Tunas (ICCAT) Standing Committee on Research and Statistics (SCRS) most recently assessed the stock in 2017. This assessment informed an Atlantic-wide total allowable catch (TAC) and the resulting domestic allocation of swordfish quota. Collectively, ICCAT Contracting Parties have not harvested the Atlantic-wide swordfish TAC in a number of years. Similarly, the United States has not harvested its full domestic allocation of swordfish quota. Thus, additional effort and landings would not jeopardize the sustainability of the North Atlantic swordfish stock.

The 2017 ICCAT SCRS North Atlantic swordfish stock assessment, which is the best scientific information available, considered all swordfish north of five degrees north latitude to be a single stock. The data considered in the assessment did not indicate any sub-populations in the Caribbean. NMFS is unaware of any reports, data, or publications suggesting a decrease in size of maturity for female swordfish. Furthermore, ICCAT has not indicated that there are any signs of a decrease of size at maturity for female swordfish, with the North Atlantic swordfish stock currently not overfished or undergoing overfishing.

C. Shark Retention Limits (Alternatives C1–C4)

Comment 8: NMFS received a number of comments regarding the shark retention limit for the HMS Commercial

Caribbean Small Boat permit. Several commenters supported the No Action alternative to not allow shark retention under the HMS Commercial Caribbean Small Boat permit. Some of these commenters stated that sharks in the U.S. Caribbean are more valuable for tourism (including recreational SCUBA diving), recreational fishing, and ecological services than as a harvested resource. Other commenters indicated that a thorough analysis on the impacts to shark stocks and protected resources is needed before increasing the shark retention limit. NMFS also received a number of comments generally supporting the retention of sharks under the HMS Commercial Caribbean Small Boat permit. Some commenters stated that a shark fishery exists in the region, with vessels being able to safely hold two to six sharks, so authorizing the retention of sharks could incentivize fishermen to obtain the appropriate permit and to report their catch for quota tracking, species diversity estimates, and fishery-dependent data collection. NMFS also received multiple comments stating that a combination of Alternatives C2 and C3 should be implemented for HMS Commercial Caribbean Small Boat permit holders. Commenters stated that the species included under Alternative C2 (smoothhounds and tiger sharks) are too limited and do not include the full range of species that can be sustainably harvested in the U.S. Caribbean. Commenters stated that smoothhound catch data reflect incidental catch and that fishermen are more likely to target tiger sharks than smoothhound sharks. Thus, an allowance for the combined retention of smoothhound sharks and tiger sharks will likely direct fishing pressure only to tiger sharks, possibly leading to unsustainable catch. Commenters suggested allowing retention of more authorized shark species including small coastal, large coastal, pelagic, and smoothhound sharks. The commenters also stated that the species list under Alternative C3 (non-prohibited large coastal, small coastal, pelagic, and smoothhound sharks) was closer to the appropriate list of allowable shark species, but the retention limit of six sharks was too high, with HMS Commercial Caribbean Small Boat vessels being able to hold two to six sharks. These commenters suggested a hybrid of the two alternatives would work, with an adjustable retention limit of up to three sharks of the following species groups: Non-prohibited large coastal sharks (no hammerhead, silky, or sandbar sharks), small coastal sharks, and smoothhound sharks. Some of these commenters, including PR DNER, were also specifically concerned about the stock status of hammerhead, oceanic whitetip, and shortfin mako sharks, and suggested waiting until more is known about whether these species can tolerate increased harvest levels before any changes are made to the regulations. Some commenters stated that retention of pelagic sharks should not be authorized.

Response: NMFS agrees that allowing a limited amount of shark retention could incentivize fishermen, who are already landing sharks, to obtain the appropriate permit and report landings. NMFS disagrees that the commercial harvest of shark should not be allowed solely based on the potential economic benefits of tourism and recreational fishing. Under the Magnuson-Stevens Act, NMFS strives to balance the needs of recreational and commercial fishing communities while also allowing for the opportunity to catch optimum yield. Given that many shark quotas are currently not being fully harvested, allowing for limited landings, which is also expected to improve compliance and data collection, is appropriate. Therefore, based on public comment regarding the species that should be allowed, NMFS developed a new preferred alternative, Alternative C4. This new preferred alternative is a hybrid of proposed Alternative C2 and Alternative C3. Under Alternative C4, NMFS establishes a retention limit range of zero to three non-prohibited large coastal, small coastal, and/or smoothhound sharks (combined) per vessel per trip, with a default retention limit of three sharks per vessel per trip. Prohibited sharks and pelagic (including shortfin mako and oceanic whitetip sharks), hammerhead, silky, blacknose, and sandbar sharks may not be retained under this alternative. This alternative is preferred because it would be responsive to public comments and would meet management goals by providing increased fishing opportunities to harvest sustainably managed sharks at incidental levels while still avoiding overharvest of specific species. This alternative is similar to Alternatives C2 and C3, with regional retention limits within the range discussed for all of the alternatives. Alternative C4 is anticipated to have neutral direct ecological impacts to shark stocks in the short- and long-term for several reasons. First, the quotas for the different shark management groups are not being modified, and fishermen would continue to be limited by the established shark quotas for these sustainably managed species. The quotas for many of these species have not been fully harvested in recent years. Therefore, additional retention of species under the large coastal (except hammerhead, silky, and sandbar sharks), small coastal (except blacknose sharks), and smoothhound shark management groups should not impact the sustainability of the stocks. Second, the retention limits in Alternative C4 would not likely increase landings to a level that may adversely affect shark populations given the limited range and hold capacity of the small-scale vessels involved. Additionally, shortfin mako and oceanic whitetip sharks, which are both in the pelagic shark management group, would not be authorized for retention and would not be adversely impacted by this action. Third, this rule is also finalizing adaptive management measures (Alternative A3) that would allow NMFS to quickly adjust shark retention limits regionally (down to zero fish, if necessary) in response to landings information. Fourth, NMFS anticipates that allowing the retention of sharks under the HMS CCSB permit will not only provide increased fishing opportunities to harvest sustainably managed sharks, but also improve catch and landings data in the U.S. Caribbean shark fishery as NMFS expects more fishermen to acquire the HMS CCSB permit given the ability to retain sharks. Increased participation and permitting would likely lead to improved data collection, more accurate stock assessments, and better management of the U.S. Caribbean shark fishery. Lastly, NMFS would carry out extensive outreach and education to fishermen and government agencies in the U.S. Caribbean region following implementation of this final action to address species identification and compliance concerns.

Comment 9: Some commenters, including the PR DNER, expressed concern that fishermen in the U.S. Caribbean are unable to properly identify shark species. These commenters, including the PR DNER, suggested that shark identification education is an important priority for management.

Response: NMFS is aware of the difficulty shark fishermen, including those in the U.S. Caribbean region, may have in accurately identifying shark species, and agrees with the commenters that education and outreach is a priority for management. As part of this rulemaking, NMFS will aim to improve species identification through extensive training, outreach, and education to fishermen and

territorial partners in the U.S. Caribbean region. Specifically, NMFS plans to work with State and territorial agencies as well as the Caribbean Fishery Management Council to ensure that outreach and education materials on shark identification, safe handling, shark fishing regulations, and proper reporting reaches shark fishermen. In addition, NMFS intends to make all outreach and educational material are available in both English and Spanish. This may include further developing educational materials, such as Caribbean HMS identification guides and brochures, that will be distributed at locations that fishermen frequent, and to individuals that acquire the HMS Commercial Caribbean Small Boat permit. NMFS anticipates that the extensive education and outreach measures will improve species identification and accurate reporting of catches of sharks in the U.S. Caribbean region.

Comment 10: NMFS received a comment expressing concern about shark catch in pupping and nursery areas. The commenter indicated that juveniles of threatened and endangered sharks are known to be caught incidentally during local small-scale fisheries interactions within pupping and nursery areas of coastal areas of Caribbean Islands. The commenter stated that shallow mangrove habitats and estuarine areas are easily accessible to local net fishermen and anglers from shore. However, the number and effort of these gears is unknown due to lack of species-specific data on recreational fisheries. The presence of small juvenile specimens of multiple shark species (*e.g.,* blacktip, lemon, hammerheads, oceanic whitetip, silky, and dusky) in the commercial fisheries suggest that U.S. Caribbean waters serve as critical nursery habitats for sharks. As such, NMFS should consider the importance of the U.S. Caribbean for the sustainability or recovery of the shark species and factor this information into the stock assessments. The commenter is concerned that human related impacts may limit the survival of juvenile sharks, undermining the populations' ability to maintain sustainable fisheries.

Response: NMFS agrees that, based on the limited information available, there are likely pupping and nursery areas of sharks found within the U.S. Caribbean, and that some juvenile sharks will likely be caught by commercial and recreational fishermen. Some of these sharks may be threatened species, but there are no endangered shark species found within the U.S. Caribbean. Specifically, within the U.S. Caribbean, two shark species are listed as threatened under the Endangered Species Act (ESA). These species are the Central and Southwest Atlantic distinct population segment (DPS) of scalloped hammerhead sharks (which is a different distinct population segment than that found along the mainland) and oceanic whitetip sharks throughout their range. At this time, there are no species of sharks listed as endangered in the U.S. Caribbean. As described above under Comment 8, NMFS is finalizing a different alternative than proposed. Specifically, NMFS is finalizing Alternative C4. Under this alternative, neither oceanic whitetip nor scalloped hammerhead sharks may be harvested, and NMFS will work to provide education and outreach materials to improve shark identification in the area. This action is consistent with the results of the 2020 Biological Opinion issued under Section 7 of the ESA. On May 15, 2020, NMFS released a Biological Opinion for all Atlantic HMS fisheries except pelagic longline, which stated that the continued operation of the fisheries analyzed in the Biological Opinion (including handgear fisheries) is not likely to jeopardize the continued existence of sea turtles, sawfish, Atlantic sturgeon, scalloped hammerhead shark (Caribbean and Central Atlantic DPS), oceanic whitetip shark, and giant manta ray. NMFS is implementing the Reasonable and Prudent Measures and Terms and Conditions of that 2020 Biological Opinion. This action is not anticipated to affect the above-referenced ESA-listed species in any way not previously analyzed for existing regulations and there is no new information that would alter this conclusion. Furthermore, the Agency does not anticipate any increased risks to overfished sharks or their habitats in the region. The gears authorized with an HMS Commercial Caribbean Small Boat permit in Federal waters are bandit, handline, harpoon, rod and reel, and buoy gear (see discussion of the definition of buoy gear in HMS fisheries and possible hook limit changes for buoy gear in Caribbean FMC-managed fisheries in the response to comment 6). Each of these is a tended gear that has low bycatch and bycatch mortality, which allows for quick release of shark species while minimizing adverse impact protected species, incidentally-caught species, or essential fish habitat. Additionally, NMFS believes that allowing for a limited number of sharks to be harvested will provide additional information, including effort and gear information, that can be used in stock assessments as well as improve our understanding of the species and any nursery and pupping areas in the U.S. Caribbean.

Comment 11: One commenter expressed concern that allowing shark retention in the U.S. Caribbean could attract fishermen from the mainland United States to the region to fish, increasing fishing effort.

Response: Currently, federally permitted commercial shark fishermen are able to fish in the U.S. Caribbean region, with the retention limits for the directed and smoothhound shark permits being higher than those allowed by the HMS Commercial Caribbean Small Boat permit. Therefore, NMFS disagrees that the allowance of up to three sharks per vessel per trip under the HMS Commercial Caribbean Small Boat permit would attract fishermen to the Caribbean and substantially increase fishing effort. The final retention limit is a conservative limit that is analogous to the lowest retention limit of the existing Federal HMS permits authorized for commercial shark fishing both off the mainland of the U.S. and in the U.S. Caribbean region. The distance for commercial fishermen from the U.S. mainland to travel to the U.S. Caribbean is over 900 miles (from Miami to U.S. Caribbean waters off the northwest of Puerto Rico) which is a considerable investment in time and fuel for any vessel, but especially one that is under 45 feet in length. The harvest of three sharks per vessel per trip would likely not offset the cost of fuel and therefore would not make a commercial fishing trip profitable. In addition, the HMS Commercial Caribbean Small Boat permit is valid only in the U.S. Caribbean region on vessels that are less than 45 feet long and cannot be held in conjunction with any other HMS permit in a calendar year. The HMS Commercial Caribbean Small Boat permit also allows fishermen to directly sell their HMS catch without possessing a dealer permit, provided that the fishermen report the harvest and sale of these fish to their respective territorial governments, which will report these data to the NMFS. This permit was implemented to provide fishermen in the region a way to comply with Federal HMS regulations while taking into account the unique and artisanal nature of the local fishery. It is unlikely that the conservative trip limit in this rulemaking would attract more fishermen from the mainland United States to the U.S. Caribbean region given the higher trip limits and vessel capacity other commercial shark permits afford them outside of the U.S. Caribbean region.

D. Other

Comment 12: Multiple comments were submitted expressing concern about enforcement of swordfish and shark fishing regulations in the U.S. Caribbean. Commenters stated that there are not enough enforcement officers to monitor all fishing areas and ports. Some commenters, including PR DNER, commented that NMFS should focus on enforcement of existing regulations and outreach before implementing changes to authorized species and increasing retention limits under the HMS Commercial Caribbean Small Boat permit.

Response: NMFS and the U.S. Coast Guard continue to enhance enforcement resources in the U.S. Caribbean and to enforce all Federal fisheries regulations with assistance from territorial governments through joint enforcement agreements. NMFS also provides outreach and training as part of those agreements. NMFS will provide targeted outreach and training on the measures of this final action to ensure compliance by fishermen. NMFS believes that one of the benefits of the preferred alternatives, including the increased swordfish retention limit and the ability to retain some shark species, will be an increase in the number of HMS Commercial Caribbean Small Boat permit holders. As a condition of the permit, fishermen will be required to know and comply with Federal regulations.

Comment 13: Comments were submitted supporting separate shark quotas for the U.S. Caribbean instead of combining the quota with the Gulf of Mexico region.

Response: These comments are outside the scope of this rulemaking because the purpose of this rulemaking is to modify the swordfish and shark retention limits for certain commercial swordfish and shark permits. The quotas and general management measures were established in the final rules to implement Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 35778, June 24, 2008; corrected on 73 FR 40658; July 15, 2008), Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013), Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50073; August 18, 2015), and Amendment 9 to the 2006 Consolidated HMS FMP (80 FR 73128; November 24, 2015), and Amendment 5b to the 2006 Consolidated HMS FMP (21 FR 14678).

Comment 14: One commenter suggested including mechanisms to ensure that sharks harvested in the U.S. Caribbean region will be contained in the local markets or for personal consumption. Other commenters stated that there is little to no market for shark meat in the U.S. Caribbean region and that allowing the retention of sharks under the HMS Commercial Caribbean Small Boat permit could promote the clandestine export of shark fins.

Response: During the rulemaking process for Amendment 4 (77 FR 59842, October 1, 2012) to the 2006 Consolidated HMS Fishery Management Plan, NMFS created the Commercial Caribbean Small Boat permit. At the time, NMFS recognized the need for a unique Caribbean permit in part because of the smaller vessels, shorter trips, limited profit margins, and high local consumption of catches associated with Caribbean commercial fisheries. Currently, NMFS does not believe that large amounts of sharks and shark products would be sold outside of local U.S. Caribbean markets because the retention limit is too low for vessels to make a profit shipping and selling the sharks outside of the U.S. Caribbean. Based on comments received from the HMS Advisory Panel, NMFS believes that there are sharks being sold in the U.S. Caribbean, and therefore, there is a local market for shark meat. Increasing commercial shark fishing opportunities in the U.S. Caribbean in a limited manner under this action could expand the market for sustainably harvested shark meat in the region. With regard to the export of shark fins, trade of shark fins that are harvested from sharks legally landed with their fins attached is legal in the United States and its Caribbean territories, and can contribute to supporting a sustainable shark fishing industry. Although no retention of sharks is currently allowed under the HMS Commercial Caribbean Small Boat permit, vessels with other commercial shark permits can currently retain sharks in the U.S. Caribbean and can legally sell their fins if they are sold to a federally permitted dealer. Increasing the number of sharks that can be legally harvested by HMS Commercial Caribbean Small Boat permit holders is not expected to correspond with a rise in illegal harvest of sharks or promotion of a clandestine fin trade. Rather, allowing the legal retention of sharks by HMS Commercial Caribbean Small Boat permit holders should provide for more legal markets of shark products, which is expected to incentivize fishermen to obtain the HMS Commercial Caribbean Small Boat permit and ultimately correspond with additional data to continue managing those species sustainably, consistent with the Magnuson-Stevens Act.

Comment 15: One commenter expressed concern about contaminants in shark flesh and stated that research on the subject has not been performed in Puerto Rican waters.

Response: The United States Food and Drug Administration's (FDA) Hazard, Analysis, and Critical Control Points (HACCP) published regulations (December 18; 1995; 60 FR 65197) that mandate the application of the HACCP principles to ensure the safe and sanitary processing of seafood products. Dealers are responsible for ensuring products they purchase and sell are in compliance with FDA HACCP regulations.

Comment 16: One commenter stated that one of the outcomes of the Caribbean Challenge Initiative summit in the British Virgin Islands in May 2013, which included the participation of the Secretary of the PR DNER was a Communiqué emphasizing the urgent need to create protection for sharks and rays across the entire Caribbean Region. As a result, PR DNER agreed to protect sharks and rays in PR waters. Therefore, promoting a shark fishery is contrary to Puerto Rico's policy.

Response: Federal conservation and management measures have been and continue to be in place in Federal waters of the U.S. Caribbean. These measures, which will continue under this action, have resulted in sustainable managed shark fisheries. As a condition of their permits, federally permitted fishermen must abide by Federal regulations wherever they fish, including state waters, unless the state (or territory in this case) has more restrictive regulations (see 50 CFR 635.4(a)(10)). NMFS works closely with the states and territories to ensure consistent regulations for shark fishing, to the extent practicable. In some cases, the regulations are not consistent. As such, federally permitted fishermen operating from and/or landing fish in Puerto Rico or the U.S. Virgin Islands must abide by any territorial commercial shark fishing regulations that are more restrictive. It is up to the fishermen to understand the regulations that are applicable to their situation.

Additionally, this rule does not require Puerto Rico to promote a shark fishery. Rather, one of the purposes of this rulemaking is to adjust the shark retention limits of the existing HMS Commercial Caribbean Small Boat permit to better provide fishing opportunities for shark fishermen to harvest sustainably managed shark species. This permit is one of several existing Federal commercial shark permits that allow the retention of sharks in Federal waters of the United States, including the U.S. Caribbean region.

Comment 17: The PR DNER submitted a comment stating that shark, tuna, and swordfish in territorial waters are managed under Federal HMS regulations, and that commercial fishermen targeting or retaining these species must hold a Federal HMS permit. However, few commercial fishermen in Puerto Rico comply with this requirement, thus, PR DNER believes that data used in developing this action may be incomplete, and there is no evidence that an increase in the swordfish and shark retention limit is needed. In addition, PR DNER stated that data collection requirements should be enforced before increasing the swordfish and shark retention limits. Other commenters, including PR DNER, stated that additional research on U.S. Caribbean shark species is needed, and that HMS landings should be closely tracked. Several commenters stated that the Agency should carry out Caribbean-specific stock assessments for all sharks authorized for retention under the HMS Commercial Caribbean Small Boat permit. Some commenters specifically noted that stock status information is needed for smoothhound sharks in the Caribbean. Although the recent smoothhound shark stock assessments found that the stocks are healthy, not overfished, and with no overfishing occurring, the commenter stated that data from the U.S. Caribbean was not incorporated into the stock assessment. Two species of smoothhound sharks have been described in the U.S. Caribbean, but the assessment failed to recognize the presence of a different subspecies (*Mustelus canis insularis Heemstra,* 1997) that occurs in the region and may be the bulk of the incidental catches.

Response: NMFS agrees that reporting of HMS landings in the region could continue to be improved. NMFS specifically implemented the HMS Commercial Caribbean Small Boat permit in 2012 (77 FR 59842; October 1, 2012) in part to improve the Agency's capability to monitor and sustainably manage the fishery. The HMS Commercial Caribbean Small Boat permit provides several advantages for U.S. Caribbean fishermen, including the ability to act as a dealer and sell catch directly to consumers and restaurants, thus better meeting the type of markets that exist in the U.S. Caribbean. Since 2012, the reporting of landings of HMS in the territorial trip ticket programs has improved; however, fishermen seem to remain reluctant to obtain the permit. NMFS believes that one benefit of the preferred alternatives, including the increased swordfish retention limit and the ability to retain some shark species under the HMS Commercial Caribbean Small Boat permit, will be an increase in the number of HMS Commercial Caribbean Small Boat permit holders because the authorized species and retention limits may make the permit more desirable and may more closely match the existing fishing practices in the region. If more fishermen in the region obtain the permit and comply with the reporting requirements, NMFS and territorial governments would get better, more complete landings information. For this reason, the Agency disagrees with the assertion that reporting compliance must be addressed before changes to the retention limits are made. Instead, changes to the retention limit would make the HMS Commercial Caribbean Small Boat permit more desirable since it increases the potential profitability and flexibility of each trip. This is expected to increase the adoption of the HMS Commercial Caribbean Small Boat permit, leading to increased reporting compliance, and increased HMS fishery data from the region.

Regarding the need for additional research and Caribbean-specific stock assessment for sharks authorized for retention under the HMS Commercial Caribbean Small Boat permit, management of the Atlantic shark fisheries is based on the best available science to achieve optimum yield while preventing overfishing and to rebuild overfished shark stocks. Domestic shark stock assessments are generally conducted through the Southeast Data, Assessment, and Review (SEDAR) process, in which NMFS participates. This process is also used by the South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils and is designed to provide transparency throughout the stock assessment process. Additionally, there are some shark stocks that are assessed internationally via the process established by ICCAT. In all cases, NMFS ensures the data and models used are appropriate, all sources of mortality are considered, and that the end result constitutes the best available science, consistent with National Standard 2 and other requirements. To that end, this final action is allowing limited retention of non-prohibited sharks under the HMS Commercial Caribbean Small Boat permit, with shark landings being carefully monitored through the HMS e-Dealer reporting system and via the existing territorial reporting system to ensure timely quota monitoring. NMFS anticipates, as mentioned above, that allowing the retention of sharks under the HMS Commercial Caribbean Small Boat permit will not only provide increased fishing opportunities to harvest sustainably managed sharks, but also improve catch and landings data in the U.S. Caribbean shark fisheries as NMFS expects more fishermen to acquire the HMS Commercial Caribbean Small Boat permit given the ability to retain sharks. Increased participation and permitting is expected to lead to improved data collection, more accurate stock assessments, and better management of the U.S. Caribbean shark fishery.

With regard to the concern on stock status information needed for smoothhound sharks in the Caribbean, the stocks of most Atlantic HMS span broad areas both within and beyond the Caribbean and regional stock assessments are not appropriate in such cases. A few shark species are found mainly in the Caribbean and in such cases regional stock assessments may be appropriate and are conducted accordingly as data are available. However, as is the case of species of smoothhound sharks, NMFS has only limited data for some species, which requires management to be based on species within a complex of species. Because of the overlap in range between the different species and the extreme difficulty in distinguishing species of smoothhound sharks from one another without genetic analysis to distinguish between the species, NMFS grouped all smoothhound species (all *Mustelus* species that are currently known and those that may be discovered within the U.S. EEZ of the Atlantic, Gulf of Mexico, and Caribbean) together within the term ''smoothhound sharks'' for management purposes and manages them as a complex and one stock. Thus, the term ''smoothhound sharks'' collectively refers to smooth dogfish (*Mustelus canis*), Florida smoothhound (*M. norrisi*), Gulf smoothhound (*M. sinusmexicanus*), small eye smoothhound (*M. higmani*), and any other *Mustelus* species that might be found in U.S. waters of the Atlantic, Gulf of Mexico, and/or Caribbean. Any *Mustelus* shark species retained by commercial fishermen in the U.S. Caribbean region under the new HMS Commercial Caribbean Small Boat shark retention limits in this final action will continue to be counted towards the smoothhound shark complex quota, which in turn will help inform future stock assessments.

Changes From the Proposed Rule

This section explains the changes in the regulatory text from the proposed rule to the final rule. These changes

were made in response to public comment.

1. Section 635.24(b)(3), (b)(4) introductory text, and (b)(4)(iii). Modification of the Swordfish Retention Limit.

In the proposed rule, NMFS proposed a default retention limit of 6 swordfish per vessel per trip for all regions except the Florida Swordfish Management Area (which would retain the default retention limit of 0 swordfish per vessel per trip) and a retention limit of 0–6 swordfish per vessel per trip for all permits. After considering public comment, NMFS is instead finalizing a default retention limit of 18 swordfish per vessel per trip for all regions except the Florida Swordfish Management Area (which would retain the default retention limit of 0 swordfish per vessel per trip) and a retention limit of 0–18 swordfish per vessel per trip for all permits. NMFS feels this action is appropriate because it will give fishermen the greatest opportunity to harvest the North Atlantic swordfish quota and will not create differences in retention limits among different permits in the U.S. Caribbean. Public comments indicated that Swordfish General Commercial permit holders and HMS Commercial Caribbean Small Boat permit holders would benefit from a retention limit range of 0 to 18 swordfish per vessel per trip, and that a default retention limit of 18 swordfish per trip was appropriate for the U.S. Caribbean region. As described above in the response to Comment 3, this change in the retention limit was based on the following five considerations—the goal of this rulemaking to provide consistency in swordfish retention limits among the three open access swordfish handgear permits, the healthy status of the North Atlantic swordfish stock, the potential for additional fishing opportunities because trips that target swordfish farther offshore will now be profitable, an increased opportunity for more fishermen in the Caribbean region to obtain the HMS Commercial Caribbean Small Boat permit and thus provide better, more complete landings information, and that this rule is also finalizing adaptive management measures that would allow NMFS to quickly adjust swordfish retention limits regionally (down to zero fish, if necessary) in response to landings information.

2. Section 635.24(a)(4)(iv). Modification of the Shark Retention Limit.

In the proposed rule, NMFS proposed a default retention limit of three smoothhound and/or tiger sharks (combined) per vessel per trip for any vessel that holds the HMS Commercial Caribbean Small Boat permit. After considering public comment, NMFS is finalizing a default retention limit of three total non-prohibited smoothhound, small coastal sharks (other than blacknose), or large coastal (other than hammerhead, silky, or sandbar) sharks (combined) per vessel per trip for any vessel that holds a HMS Commercial Caribbean Small Boat permit. Specifically, HMS Commercial Caribbean Small Boat permit holders could retain and sell tiger, blacktip, bull, spinner, lemon, Atlantic sharpnose, finetooth, bonnethead, and smoothhound sharks. This change is responsive to public comments, and meets management goals by providing increased fishing opportunities to harvest sustainably managed sharks at incidental levels while still avoiding overharvest of specific species. As described above in the response to Comment 8, in making this change, NMFS considered several factors including that fishermen would continue to be limited by the established and currently underutilized shark quotas, that the final retention limits would not likely increase landings to a level that may adversely affect shark populations given the limited range and hold capacity of the small-scale vessels involved, that this rule is also finalizing adaptive management measures that would allow NMFS to quickly adjust shark retention limits regionally (down to zero fish, if necessary) in response to landings information, and that providing additional opportunities to retain sharks could improve catch and landings data in the U.S. Caribbean shark fishery if more fishermen acquire the HMS Commercial Caribbean Small Boat permit. Lastly, as part of the final action, NMFS intends to conduct extensive outreach and education to fishermen and government agencies in the U.S. Caribbean region to address species identification and compliance concerns.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the 2006 Consolidated Atlantic HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Summary of the Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, our responses to those comments, and a summary of the analyses completed to support the action. The full FRFA is available from NMFS (see **ADDRESSES**). A summary is provided below.

A. Statement of the Need for and Objectives of This Final Rule

Section 604(a)(1) of the RFA requires Agencies to state the need for and objective of, the final action.

The objectives of this rulemaking are to provide consistency between the three open access swordfish handgear permits, all of which allow similar gears to be used within U.S. Atlantic and Caribbean waters, and to provide increased fishing opportunities for sharks in the U.S. Caribbean. Furthermore, this final action would increase administrative efficiencies and increase management flexibility by managing the open access swordfish commercial permits similarly.

B. A Summary of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Rule as a Result of Such Comments

Section 604(a)(2) requires that a FRFA include a summary of significant issues raised by public comment in response to the IRFA and a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments.

During the public comment period, commenters requested NMFS implement a higher swordfish retention limit given the health of the stock, the availability of the resource, and the capacity and need of some permit holders to transport more than six swordfish when traveling further offshore to fishing grounds. Based on public comment, NMFS now prefers Alternative B4, instead of the preferred alternative in the Draft EA, Alternative B2, as this alternative will provide consistency in swordfish retention limits among the three open access swordfish handgear permits and a higher retention limit than the one proposed, which would provide additional fishing opportunities because trips that target swordfish farther offshore will be profitable under the higher retention limit.

During the public comment period, some commenters expressed support for the preferred alternative in the Draft EA,

Alternative C2, but also argued that smoothhound sharks are only caught incidentally and are not a target species. As a result, these commenters were concerned that Alternative C2 would place any shark meat demand solely on tiger sharks. The commenters also felt Alternative C2 could potentially result in fishermen discarding sharks until tiger or smoothhound sharks were landed, potentially increasing fishing effort, discards, and shark mortality. The commenters also opposed the retention of any prohibited species along with some specific species, including pelagic and hammerhead sharks, given concerns regarding those species' vulnerability to fishing pressure, stock status, and effects on reef systems and ecotourism. Some commenters indicated that NMFS should combine Alternative C2 with Alternative C3 to allow for fishing opportunities to harvest sustainably managed sharks, with a retention limit not to exceed six sharks given the capacity and size of the vessels, while avoiding overharvest of specific shark species, including pelagic and hammerhead sharks. Commenters also requested NMFS provide extensive outreach and education to fishermen and government agencies on species identification and permit requirements. After considering public comment, NMFS created a new alternative, Alternative C4 to address the issues raised by the public.

NMFS did not receive any comments from the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule or the IRFA. All of the comments and responses to the comments are summarized in Appendix I of the Final EA.

C. Description and Estimate of the Number of Small Entities to Which the Final Rule Would Apply

Section 604(a)(4) of the Regulatory Flexibility Act requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register** (FR), which NMFS did on December 29, 2015 (80 FR 81194, December 29, 2015). In this final rule effective on July 1, 2016, NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than $11 million for commercial fishing.

As discussed in Section 6.2.1 of the Final EA, the final rule would apply to the 665 Swordfish General Commercial permit holders, 30 HMS Commercial Caribbean Small Boat permit holders, and 3,839 HMS Charter/Headboat permit holders with a commercial sale endorsement. Active permit holders are defined as those with valid permits that landed one swordfish based on HMS electronic dealer reports. Of those 665 Swordfish General Commercial permit holders, 19 landed swordfish in 2020. Of 30 HMS Commercial Caribbean Small Boat permit holders, two landed swordfish in 2020. Of the 3,839 HMS Charter/Headboat vessels, 23 had an active commercial sale endorsement, and landed swordfish in 2020. NMFS has determined that the final rule would not likely affect any small governmental jurisdictions. More information regarding the description of the fisheries affected, and the categories and number of permit holders can be found in Chapter 6 of the Final EA.

D. Description of the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirements of the Report or Record

Section 604(a)(5) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements.

E. Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Under section 604(a)(6) of the RFA requires Agencies in the FRFA to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. These impacts are discussed below and in Chapters 4 and 6 of the Final EA.

The alternatives considered and analyzed are described below. The FRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the final action on vessels.

Alternative A1 would maintain the current ability to adjust the regional swordfish retention limits for vessels possessing the HMS Commercial Caribbean Small Boat permit only through framework adjustment procedures. *See* 50 CFR 635.34(b). This alternative would not result in any change in economic impacts, and would have neutral economic impacts on HMS permit holders.

Alternative A2, the preferred alternative, would provide NMFS the ability to adjust the swordfish retention limit for the HMS Commercial Caribbean Small Boat fishery on an inseason basis, as needed. NMFS already has the ability to adjust the swordfish retention limits under the Swordfish General Commercial and HMS Charter/Headboat permits. Under this alternative, NMFS would have more flexibility in the regulations to be more responsive to the changes needed in the swordfish fishery within the fishing season. The alternative would provide for a new regulatory process that would not change the actual retention limits. Therefore, this alternative would have neutral economic impacts to HMS permit holders.

Alternative A3, the preferred alternative, would provide NMFS the ability to adjust the shark retention limit for the HMS Commercial Caribbean Small Boat fishery on an inseason basis, as needed. NMFS already has the ability to adjust the shark retention limits under shark inseason trip limit adjustment authorization criteria for commercial shark fishermen. Under this alternative, NMFS would have more flexibility in the regulations to be more responsive to the changes needed in the shark fishery within the fishing season. The alternative would provide for a new regulatory process that would not change the actual retention limits. Therefore, this alternative would have neutral economic impacts to HMS permit holders.

Under Alternative B1, the No Action alternative, NMFS would maintain the existing swordfish retention limits within the swordfish management regions for all vessels possessing an HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial permit, or an HMS Charter/Headboat permit on a commercial trip. For vessels possessing a Swordfish General Commercial permit or vessels with an HMS Charter/Headboat permit on a commercial trip, the current range of swordfish retention limits is zero to six swordfish per vessel per trip for all regions with the default retention limits (see Table 4.1 of the Final EA). For the HMS Commercial Caribbean Small Boat permit, the retention limit is two swordfish per vessel per trip. As discussed in Chapter 3 of the Final EA, a single swordfish is estimated to be worth $336.72 (ex-vessel), on average, whereas six swordfish are estimated to be worth $2,020.32 (ex-vessel). Under this alternative, the potential gross revenue per trip for each HMS Commercial Caribbean Small Boat vessel landing the trip limit would be approximately $673.44 based on the average ex-vessel price of swordfish. Similarly, the potential gross revenue per trip for vessels possessing a Swordfish General Commercial permit or HMS Charter/Headboat permit on a commercial trip fishing in either the U.S. Caribbean, Northwest Atlantic or Gulf of Mexico and landing the full trip limit would be $2,020.32, with gross revenue from swordfish ranging from either $673.44662 under a two swordfish limit or $1,010.16 under a three swordfish limit to $2,020.32 under a six swordfish limit. Alternative B1 would result in neutral economic impacts in the short- and long-term since there is no change in the management structure of the swordfish fishery.

Under Alternative B2, NMFS would maintain the default swordfish retention limit of zero swordfish per vessel per trip for the Florida Management Region and establish a default swordfish retention limit of six swordfish per vessel per trip for all other regions and for HMS Commercial Caribbean Small Boat and Swordfish General Commercial permit holders, and HMS Charter/Headboat permit holders with a commercial sale endorsement. For these permit holders in all regions, the retention limit range would be zero to six swordfish per vessel per trip. Under this alternative, the potential gross revenue per trip for each vessel that has landed the maximum allowed trip limit under either of the three swordfish commercial swordfish permits (HMS Commercial Caribbean Small Boat permit, Swordfish General Commercial permit, and HMS Charter/Headboat permit, on a commercial trip) and within the U.S. Caribbean, Northwest Atlantic, and Gulf of Mexico would be $2,020.32 per vessel per trip (Table 4.1 of the Final EA). For example, for a vessel making ten trips per year and retaining the six swordfish limit each trip, the annual gross revenue derived from swordfish would generate up to $20,203.20. By having a higher default trip limit for swordfish, this alternative would continue to provide a seasonal, or secondary, fishery for most participants as well as new economic benefits to some fishermen as well as fishing tackle manufacturers and suppliers, bait suppliers, fuel providers, and swordfish dealers. Alternative B2 would likely result in overall neutral economic impacts in the short- and long-term. NMFS has increased the swordfish retention limit in the Northwest Atlantic and Gulf of Mexico, and the U.S. Caribbean regions to six every year since the implementation of the Swordfish General Commercial permit, thus any economic impact would be neutral for Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial sale endorsement. For the HMS Commercial Caribbean Small Boat permit holders, there would be a minor increase in revenue, but this minor increase would not have significant economic impacts for the fishery overall.

Under Alternative B3, the retention limit range would be increased for Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial sale endorsement, from zero to six swordfish per vessel per trip to 0–18 swordfish per vessel per trip for all regions with the same default retention limits as Alternative B2. For the HMS Commercial Caribbean Small Boat permit, NMFS would establish a swordfish retention limit range of 0–18 swordfish per vessel per trip with a default retention limit of six swordfish per vessel per trip. Similar to Alternative B2, this alternative would establish a default swordfish retention limit of six swordfish per vessel per trip for the HMS Commercial Caribbean Small Boat permit holder within the U.S. Caribbean region. However, unlike Alternative B2, this alternative would increase the default swordfish retention limit from 6 swordfish per vessel per trip to 18 swordfish per vessel per trip for vessels possessing a Swordfish General Commercial permit, or vessels with an HMS Charter/Headboat permit with a commercial sale endorsement within the Northwest Atlantic, Gulf of Mexico, and the U.S. Caribbean swordfish management regions. The default swordfish retention trip limit for the Florida Swordfish Management Area would remain at zero. Under this alternative, the potential gross revenue for each vessel that has landed the maximum allowed trip limit under an HMS Commercial Caribbean Small Boat permit within the U.S. Caribbean region would be $2,020.32 per vessel per trip with gross revenue per trip from swordfish ranging from $2,020.32 to $6,060.96 under a 6 and 18 swordfish limit, respectively (Table 4.1 of the Final EA). Similarly, the potential gross revenue per trip for vessels possessing a Swordfish General Commercial permit or vessels with an HMS Charter/Headboat permit on a commercial trip fishing in either the U.S. Caribbean, Northwest Atlantic or Gulf of Mexico swordfish management regions retaining the maximum allowed limit on each trip would be $6,060.96 per vessel per trip (Table 4.1 of the Final EA). For example, for a vessel making ten trips per year and retaining the maximum allowable limit (*i.e.,* an 18 swordfish retention limit) each trip, the annual gross revenue derived from swordfish would generate up to $60,609.60. By having a higher default trip limit for swordfish, this alternative would continue to provide a seasonal, or secondary, fishery for most participants as well as new economic benefits to some fishermen as well as fishing tackle manufacturers and suppliers, bait suppliers, fuel providers, and swordfish dealers. Alternative B3 would likely result in minor beneficial direct economic impacts on HMS Caribbean Commercial Small Boat permit holders, Swordfish General Commercial permit holders or HMS Charter/Headboat permit holders with a commercial sale endorsement in the short- and long-term since the retention limit is set above the default limit for all swordfish management region, resulting in fishermen potentially realizing higher trip revenues since fishermen would have more swordfish to sell.

Under Alternative B4, the preferred alternative, NMFS would increase the retention limit range to 0–18 swordfish per vessel per trip for all regions (*i.e.,* Florida Swordfish Management area, and the U.S. Caribbean, the Gulf of Mexico, and the Northwest Atlantic regions) for all three swordfish commercial permits. The default swordfish retention limit for these permit holders in all regions would be

set at 18 swordfish per vessel per trip, except for the Florida Swordfish Management Area, which would have a default swordfish retention limit of zero. As noted above, Alternative B3 would make the same modifications, but with a lower (six swordfish) default retention limit for the HMS Commercial Caribbean Small Boat permit within the U.S. Caribbean region. Similar to Alternative B3, the potential gross revenue per trip for each vessel that has landed the maximum allowed trip limit (*i.e.,* an 18 swordfish retention limit) with an HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial permit, or a vessel with an HMS Charter/Headboat permit on a commercial trip fishing in either the U.S. Caribbean, the Northwest Atlantic or the Gulf of Mexico swordfish management regions would be $6,060.96 (Table 4.1 of the Final EA). For example, for a vessel making ten trips per year and retaining the maximum allowable limit (*i.e.,* an 18 swordfish retention limit) each trip, the annual gross revenue derived from swordfish would generate up to $60,609.60. Similar to Alternative B3, by having a higher default trip limit for swordfish, this alternative would continue to provide a seasonal, or secondary, fishery for most participants. Increasing the retention limit above the default limit for all swordfish management regions would realize higher trip revenues since fishermen would have more swordfish to sell. Alternative B4 would likely result in minor beneficial direct economic impacts on HMS Commercial Caribbean Small Boat permit holders, Swordfish General Commercial permit holders or HMS Charter/Headboat permit holders with a commercial sale endorsement in the short- and long-term since the retention limit is set above the default limit for all swordfish management regions, resulting in fishermen potentially realizing higher trip revenues since fishermen would have more swordfish to sell.

Under Alternative C1, the No Action alternative, NMFS would maintain the current retention limit of zero sharks per vessel per trip for vessels issued an HMS Commercial Caribbean Small Boat permit. Thus, this alternative would result in neutral direct economic impacts to HMS Commercial Caribbean Small Boat permit holder in the short- and long-term. However, the No Action alternative would maintain management measures that may not be addressing multiple requests (see Chapter 1 of the Final EA) by commercial shark fishermen to land a limited number of sharks, restricting NMFS' ability to provide additional fishing opportunities to fishermen when other factors, such as availability of fish on the grounds and available quota, support such an increase.

Under Alternative C2, NMFS would establish a default shark retention limit of three smoothhound and/or tiger sharks (combined) per vessel per trip for the HMS Commercial Caribbean Small Boat permit holders. The retention limit range would be zero to three smoothhound and/or tiger sharks (combined) per vessel per trip. The retention of any other shark species would not be allowed under this alternative. Table 4.3 in the Final EA summarizes the potential increase in annual ex-vessel revenue based on average weight and price data of smoothhound and tiger sharks. If a fisherman landed the maximum trip limit, with only tiger sharks being caught, and takes two trips per month (24 trips per year), then the annual revenue per vessel associated with this activity would be $5,067. If the vessel landed the full trip limit and conducted two trips per month (24 trips per year), with only smoothhound sharks being caught, then the annual revenue per vessel would be $835. Because the Agency would have the authority to adjust the shark retention limit from zero to three, the annual ex-vessel revenue estimates could vary from $0 (under a zero fish limit) to as much as $835 to $5,067, depending on the species composition of the catch. This minor increase in per trip and annual revenue would result in neutral economic impacts in the short- and long-term to the HMS Commercial Caribbean Small Boat permit holders because any potential increase would be relatively minor.

Under Alternative C3, NMFS would establish a default retention limit of six non-prohibited large coastal, small coastal, pelagic, and/or smoothhound sharks (combined) per vessel per trip for HMS Commercial Caribbean Small Boat permit holders. The retention limit range would be zero to six for non-prohibited large coastal, small coastal, pelagic, and smoothhound sharks (combined) per vessel per trip. Table 4.4 in the Final EA summarizes the potential increase in annual ex-vessel revenue based on average weight and price data of non-prohibited large coastal, small coastal, pelagic, and smoothhound sharks. If a fisherman landed the maximum trip limit, with only large coastal sharks being caught, and takes two trips per month (24 trips per year), then the annual revenue per vessel associated with this activity would be $10,135 (Table 4.4 in the Final EA). Assuming a successful trip and two trips per month, the annual revenue per vessel associated with fishermen landing the full trip limit of either, small coastal, pelagic or smoothhound sharks would be $969, $12,817, and $1,669, respectively. Because the Agency would have the authority to adjust the shark retention limit from zero to six, the annual ex-vessel revenue estimates could vary from $0 (under a zero fish limit) to as much as $969 to $12,817, depending on the species composition of the catch. This minor increase in per trip and annual revenue would result in neutral economic impacts to the HMS Commercial Caribbean Small Boat permit holders in the short- and long-term because any potential increase would be relatively minor.

Under Alternative C4, the preferred alternative, NMFS would establish a retention limit range of zero to three non-prohibited large coastal, small coastal, and/or smoothhound sharks (combined) per vessel per trip, with a default retention limit of three sharks per vessel per trip. The retention of pelagic, hammerhead, silky, blacknose, sandbar, and prohibited sharks is not allowed under this alternative. Table 4.5 in the Final EA summarizes the potential increase in annual ex-vessel revenue based on average weight and price data of non-prohibited large coastal, small coastal, and smoothhound sharks. Assuming a successful trip and two trips per month (24 trips per year), the annual revenue per vessel associated with fishermen landing the full trip limit of either non-prohibited large coastal, small coastal, or smoothhound sharks would be $5,067, $484, and $835 respectively. Because the Agency would have the authority to adjust the shark retention limit from 0 to three, the annual ex-vessel revenue estimates could vary from $0 (under a 0 fish limit) to as much as $484 to $5,067, depending on the species composition of the catch. This minor increase in per trip, and annual revenue would result in neutral direct socioeconomic impacts in the short- and long-term to the HMS Commercial Caribbean Small Boat permit holders because any potential increase would be relatively minor.

At the proposed rule stage, NMFS preferred Alternative C2, limiting the harvest to up to three tiger and/or smoothhound shark (combined) per vessel per trip for HMS CCSB permit holders. During the public comment period, some commenters expressed support for Alternative C2, but also argued that smoothhound sharks are only caught incidentally and are not a

target species. As a result, these commenters were concerned that Alternative C2 would place any shark meat demand solely on tiger sharks. The commenters also felt Alternative C2 could potentially result in fishermen discarding sharks until tiger or smoothhound sharks were landed, potentially increasing fishing effort, discards, and shark mortality. The commenters also opposed the retention of any prohibited species along with some specific species, including pelagic and hammerhead sharks, given concerns regarding those species' vulnerability to fishing pressure, stock status, and effects on reef systems and ecotourism. Some commenters indicated that NMFS should combine Alternative C2 with Alternative C3 to allow for fishing opportunities to harvest sustainably managed sharks, with a retention limit not to exceed six sharks given the capacity and size of the vessels, while avoiding overharvest of specific shark species, including pelagic and hammerhead sharks. Commenters also requested NMFS provide extensive outreach and education to fishermen and government agencies on species identification and permit requirements. After considering public comment, NMFS created this new alternative, Alternative C4. This alternative is preferred because it is responsive to public comments and would meet the management goals highlighted in Chapter 1 of the Final EA by providing increased fishing opportunities to harvest sustainably managed sharks at incidental levels while still avoiding overharvest of specific species.

Given the amount of time that transpired from the Draft EA to the Final EA, the analyses in the Final EA were updated with an additional year of fisheries data, where appropriate. In addition, the total annual revenue calculations in the Final EA were revised from the Draft EA to better estimate the total annual revenue for each alternative by focusing on the average number of trips taken by the fleet multiplied by the ex-vessel revenue per trip. These updates did not change the conclusions of the analyses in the Draft EA regarding ecological, economic and social impacts of the alternatives.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has prepared a listserv notice summarizing fishery information and regulations for the changes to the swordfish and shark commercial permits affected in this rule. This listserv notice also serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: April 22, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.24, revise paragraphs (a)(4)(iv), (b)(3), (b)(4) introductory text, and (b)(4)(iii), remove paragraph (b)(4)(iv), and add paragraph (b)(5) to read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

* * * * *

(a) * * *

(4) * * *

(iv) A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may retain, possess, land, or sell any blacktip, bull, lemon, nurse, spinner, tiger, Atlantic sharpnose, bonnethead, finetooth, and smoothhound shark, subject to the HMS Commercial Caribbean Small Boat permit shark retention limit. A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may not retain, possess, land, or sell any hammerhead, blacknose, silky, sandbar, blue, thresher, oceanic whitetip, shortfin mako, or prohibited shark, including parts or pieces of these sharks. The shark retention limit for a person who owns, operates, or is aboard a vessel issued an HMS Commercial Caribbean Small Boat permit will range from zero to three sharks per vessel per trip. At the start of each fishing year, the default shark trip limit will apply. During the fishing year, NMFS may adjust the default shark trip limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section. The default shark retention limit for the HMS Commercial Caribbean Small Boat permit is three sharks per vessel per trip.

* * * * *

(b) * * *

(3) A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may retain, possess, land, or sell North Atlantic swordfish, subject to the HMS Commercial Caribbean Small Boat permit swordfish retention limit. The swordfish retention limit for a person who owns, operates, or is aboard a vessel issued an HMS Commercial Caribbean Small Boat permit will range from 0 to 18 swordfish per vessel per trip. At the start of each fishing year, the default retention limit will apply. During the fishing year, NMFS may adjust the default retention limit per the inseason regional retention limit adjustment criteria listed in paragraph (b)(5) of this section. The default retention limit for the HMS Commercial Caribbean Small Boat permit is eighteen swordfish per vessel per trip.

(4) A person who owns, operates, or is aboard a vessel that has been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) are subject to the regional swordfish retention limits specified at paragraph (b)(4)(iii) of this section, which may be adjusted during the fishing year based upon the inseason regional retention limit adjustment criteria listed in paragraph (b)(5) of this section.

* * * * *

(iii) *Regional retention limits.* The swordfish regional retention limits for each region will range from 0 to 18 swordfish per vessel per trip. At the start of each fishing year, the default regional retention limits will apply. During the fishing year, NMFS may adjust the default retention limits per the inseason regional retention limit adjustment criteria listed in paragraph (b)(5) of this section. The default retention limits for the regions set forth under paragraph (b)(4)(i) of this section are:

(A) Zero swordfish per vessel per trip for the Florida Swordfish Management Area;

(B) Eighteen swordfish per vessel per trip for the Caribbean region;

(C) Eighteen swordfish per vessel per trip for the Northwest Atlantic region; and

(D) Eighteen swordfish per vessel per trip for the Gulf of Mexico region.

(5) NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to the default swordfish retention limits specified at paragraphs (b)(3) and (b)(4)(iii) of this section. Before making any inseason adjustments to swordfish retention limits, NMFS will consider the following criteria and other relevant factors:

(i) The usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock;

(ii) The estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year;

(iii) The estimated amounts by which quotas for other categories of the fishery might be exceeded;

(iv) Effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments;

(v) Variations in seasonal distribution, abundance, or migration patterns of swordfish;

(vi) Effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and

(vii) Review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

* * * * *

[FR Doc. 2021–08814 Filed 4–29–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02; RTID 0648–XB018]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason Angling category retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) daily retention limit that applies to Highly Migratory Species (HMS) Angling category permitted vessels and HMS Charter/Headboat vessels (when fishing recreationally for BFT) should be adjusted for the remainder of 2021, based on consideration of the regulatory determination criteria regarding inseason adjustments. NMFS is adjusting the Angling category BFT daily retention limit from the default of one school, large school, or small medium BFT to: Two school BFT and one large school/small medium BFT per vessel per day/trip for private vessels with HMS Angling category permits; three school BFT and one large school/small medium BFT per vessel per day/trip for charter boat vessels with HMS Charter/Headboat permits when fishing recreationally; and six school BFT and two large school/small medium BFT per vessel per day/trip for headboat vessels with HMS Charter/Headboat permits when fishing recreationally. These retention limits are effective in all areas, except for the Gulf of Mexico, where targeted fishing for BFT is prohibited.

DATES: Effective May 2, 2021 through December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* 978–675–2168, or Lauren Latchford, *lauren.latchford@noaa.gov,* 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended 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 Atlantic HMS FMP and its amendments. NMFS is required under the MSA 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.

As a method for limiting fishing mortality on juvenile BFT, ICCAT recommendations have adopted a tolerance limit on the annual harvest of BFT measuring less than 115 centimeters (cm) (45.3 inches) (straight fork length) to no more than 10 percent by weight of a Contracting Party's total BFT quota. Any overharvest of such tolerance limit from one year must be subtracted from the tolerance limit applicable in the next year or the year after that. NMFS implements this provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches curved fork length) to 127.3 metric tons (mt)) annually (10 percent of the U.S. quota)

In 2018, NMFS implemented a final rule that established the U.S. BFT quota and subquotas consistent with ICCAT Recommendation 17–06 (83 FR 53191, October 11, 2018). In 2020, following a stock assessment update, ICCAT adopted Recommendation 20–06, which maintained the overall total allowable catch of 2,350 mt and the associated U.S. quota. As such, as described in § 635.27(a), the current baseline U.S. quota continues to be 1,247.86 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). The Angling category quota continues to be 232.4 mt (127.3 mt for school BFT, 99.8 mt for large school/small medium BFT, and 5.3 mt for large medium/giant BFT).

The Angling category season opened on January 1, 2021, and continues through December 31, 2021. The size classes of BFT are summarized in Table 1. Large school and small medium BFT traditionally have been managed as one size class, *i.e.,* a limit of one large school/small medium BFT (measuring 47 to less than 73 inches). Similarly, large medium and giant BFT traditionally have been managed as one size class that is also known as the ''trophy'' class. Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT is in effect and applies to HMS Angling category and HMS Charter/Headboat permitted vessels (when fishing recreationally for BFT) (§ 635.23(b)(2)).

As defined at § 600.10, ''charter boat'' means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire (*i.e.,* uninspected) and ''headboat'' means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire (*i.e.,* greater than six).

TABLE 1—BFT SIZE CLASSES

Size class	Curved fork length
School	27 to less than 47 inches (68.5 to less than 119 cm).
Large school	47 to less than 59 inches (119 to less than 150 cm).
Small medium	59 to less than 73 inches (150 to less than 185 cm).
Large medium	73 to less than 81 inches (185 to less than 206 cm).
Giant	81 inches or greater (206 cm or greater).

Table 2 summarizes the recreational quota, subquotas, landings, and retention limit information for 2019 and 2020, by size class.

TABLE 2—ANGLING CATEGORY QUOTAS (mt), ESTIMATED LANDINGS (mt), AND DAILY RETENTION LIMITS, 2019–2020

Size class	2019			2020		
	Subquotas and total quota (mt)	Landings (mt)	Amount of subquotas and total quota used (percent)	Subquotas and total quota (mt)	Landings (mt)	Amount of subquotas and total quota used (percent)
School	127.3	71	56	127.3	81.7	64
Large School/Small Medium	99.8	95	95	99.8	112.3	113
Trophy: Large Medium/Giant	5.3	15.8	298	5.3	8.9	168
Total	232.4	181.8	78	232.4	202.9	87
Daily Retention Limits (per Vessel)	*January 1 through May 10:* 1 school, large school, or small medium (default) *May 11 through December 31:* (84 FR 20296, May 9, 2019) *Private boats:* 2 school *and* 1 large school/small medium *Charter boats:* 3 school *and* 1 large school/small medium *Headboats:* 6 school *and* 2 large school/small medium			*January 1 through May 1:* 1 school, large school, or small medium (default). *May 2 through December 31:* (85 FR 26365, May 4, 2020). *Private boats:* 2 school *and* 1 large school/small medium. *Charter boats:* 3 school *and* 1 large school/small medium. *Headboats:* 6 school *and* 2 large school/small medium.		

Adjustment of Angling Category Daily Retention Limit

Under § 635.23(b)(3), NMFS may increase or decrease the Angling category retention limit for any size class of BFT after considering regulatory determination criteria under § 635.27(a)(8). Also under § 635.23(b)(3), recreational retention limits may be adjusted separately for specific vessel type, such as private vessels, headboats, or charter boats.

NMFS has considered all of the relevant determination criteria and their applicability to the change in the Angling category retention limit. The criteria and their application are discussed below.

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by recreational fishermen continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the Angling category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)). Additionally, NMFS considered Angling category landings in 2019 and 2020, which were approximately 78 percent and 87 percent of the 232.4-mt annual Angling category quota, respectively, including landings of 56 percent and 64 percent of the available school BFT quota, respectively, under the same daily retention limits as implemented in this action. Thus, absent retention limit adjustment, NMFS anticipates that the full 2021 Angling category quota would not be harvested under the default retention limit.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP (§ 635.27(a)(8)(v) and (vi)). These retention limits would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations, (established in Recommendation 17–06 and maintained in Recommendation 20–06), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. These retention limits are in keeping with those established quotas and management measures. It is also important that NMFS limit landings to the subquotas both to adhere to the FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (*e.g.,* fish caught at each age) that was assumed in the latest stock assessment, and these retention limits are consistent with those objectives.

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the available Angling category

quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)).

NMFS considered input on recreational limits from the HMS Advisory Panel at its May and September 2020 meetings and that ICCAT recommendations and HMS implementing regulations limit the allowance for landings of school bluefin tuna to ten percent of the U.S. baseline quota (*i.e.,* 127.3 mt). The 2020 school BFT landings represented approximately 6 percent of the total U.S. quota for 2020, well under the ICCAT recommended 10-percent limit. NMFS is not setting higher school BFT limits than the adjustments listed in Table 1 due to the potential risk of exceeding the ICCAT tolerance limit on school BFT and other considerations, such as potential effort shifts to BFT fishing as a result of current recreational retention limits for New England groundfish and striped bass as well as high variability in bluefin tuna availability.

Given that the Angling category landings fell short of the available quota in 2019 and 2020, even with the retention limit adjustments, and considering the regulatory criteria above, NMFS has determined that the Angling category retention limits applicable to participants in the HMS Angling category and HMS Charter/Headboat permitted vessels should be adjusted upwards from the default levels.

NMFS has also concluded that implementation of separate limits for private, charter boat, and headboat vessels is appropriate, recognizing the different nature, socio-economic needs, and recent landings results of the two components of the recreational BFT fishery. For example, charter operators historically have indicated that a retention limit greater than the default limit of one fish is vital to their ability to attract customers. In addition, Large Pelagics Survey estimates indicate that charter/headboat BFT landings averaged 24 percent of recent recreational landings for 2019 through 2020, with the remaining 76 percent landed by private vessels. NMFS has further concluded that a higher limit for headboats (than charter boats) is appropriate, given the limited number of headboats participating in the bluefin tuna fishery.

Given these considerations, for private vessels with HMS Angling category permits, this action adjusts the limit upwards to two school BFT and one large school/small medium BFT per vessel per day/trip (*i.e.,* two BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). For charter boat vessels with HMS Charter/Headboat permits, this action adjusts the limit upwards to three school BFT and one large school/small medium BFT per vessel per day/trip when fishing recreationally for BFT (*i.e.,* three BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). For headboat vessels with HMS Charter/Headboat permits, this action adjusts the limit upwards to six school BFT and two large school/small medium BFT per vessel per day/trip when fishing recreationally for BFT (*i.e.,* three BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a private vessel (fishing under the Angling category retention limit) takes a two-day trip or makes two trips in one day, the day/trip limit of two school BFT and one large school/small medium BFT applies and may not be exceeded upon landing. This action does not change the retention limit for trophy size BFT.

NMFS anticipates that the BFT daily retention limits in this action will result in landings during 2021 that would not exceed the available subquotas. Lower retention limits could result in substantial underharvest of the codified Angling category subquota, and increasing the daily limits further may risk exceeding the available quota, contrary to the objectives of the 2006 Consolidated HMS FMP and amendments.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely through the mandatory landings and catch reports. HMS Angling category 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 *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.). Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

HMS Angling category and HMS Charter/Headboat permit holders may 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 their 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.*

Classification

The Assistant Administrator for NMFS (AA) finds that 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:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments 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. Affording prior notice and opportunity for public comment to implement the daily retention limit for the remainder of 2021 at this time is impracticable. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, immediate adjustment to the Angling category BFT daily retention limit from the default levels is warranted to allow fishermen to take advantage of the availability of fish and of quota. NMFS could not have proposed these actions earlier, as it needed to consider and respond to updated data and information from the 2020 Angling category. If NMFS was to offer a public comment period now, after having appropriately considered that data, it could preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria, and/or could result in selection of a retention limit inappropriately high or low for the amount of quota available for the period.

Fisheries under the Angling category daily retention limit are currently underway and thus prior notice would be contrary to the public interest. Delays in increasing daily recreational BFT retention limit would adversely affect those HMS Angling category and HMS Charter/Headboat vessels that would otherwise have an opportunity to harvest more than the default retention limit of one school, large school, or small medium BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Analysis of available data shows that adjustment to the BFT daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov*. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(b)(3), and is exempt from review under Executive Order 12866.

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

Dated: April 27, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–09111 Filed 4–29–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210426–0089]

RIN 0648–BK26

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approval of 2021 and 2022 Sector Operations Plans and Allocation of 2021 Northeast Multispecies Annual Catch Entitlements

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

ACTION: Final rule.

SUMMARY: This final rule approves sector operations plans and contracts, grants 19 regulatory exemptions for fishing years 2021 and 2022, allocates Northeast multispecies annual catch entitlements to approved sectors for fishing year 2021 including default specifications for seven stocks, and makes regulatory amendments necessary to administer electronic monitoring. This action is intended to allow limited access permit holders to continue to operate or form sectors and to exempt sectors from certain effort control regulations to improve the efficiency and economics of sector vessels. Approval of sector operations plans and contracts is necessary to allocate annual catch entitlements to the sectors in order for sectors to operate.

DATES: Sector operations plans and regulatory exemptions are effective May 1, 2021, through April 30, 2023. Northeast multispecies annual catch entitlements for sectors are effective May 1, 2021, through April 30, 2022.

ADDRESSES: Copies of each sector's operations plan and contract are available from the NMFS Greater Atlantic Regional Fisheries Office: Contact Claire Fitz-Gerald at *Claire.Fitz-Gerald@noaa.gov* and Kyle Molton at *Kyle.Molton@noaa.gov.* These documents are also accessible via the GARFO website. To view these documents and the **Federal Register** documents referenced in this rule, you can visit: *https://www.fisheries.noaa.gov/management-plan/northeast-multispecies-management-plan.*

FOR FURTHER INFORMATION CONTACT: Claire Fitz-Gerald, Fishery Policy Analyst, (978) 281–9255.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Multispecies Fishery Management Plan (FMP) defines a sector as a group of persons holding limited access Northeast multispecies permits that have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a portion of the total allowable catch (TAC) in order to achieve objectives consistent with applicable FMP goals and objectives. A sector must be comprised of at least three Northeast multispecies permits issued to at least three different persons, none of whom have any common ownership interest in the permits, vessels, or businesses associated with the permits issued to the other two or more persons in that sector. Sectors are self-selecting, meaning each sector can choose its members.

The Northeast multispecies sector management system allocates a portion of the Northeast multispecies stocks to each sector. These annual sector allocations are known as annual catch entitlements (ACE) and are based on the collective fishing history of a sector's members. Sectors may receive allocations of large-mesh Northeast multispecies stocks with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and ocean pout, which are non-allocated species managed under separate effort controls. ACEs are portions of a stock's annual catch limit (ACL) available to commercial Northeast multispecies vessels. A sector determines how to harvest its ACE.

Because sectors elect to receive an allocation under a quota-based system, the FMP grants sector vessels several ''universal'' exemptions from the FMP's effort controls. These universal exemptions apply to: Trip limits on allocated stocks; Northeast multispecies days-at-sea (DAS) restrictions; the requirement to use a 6.5-inch (16.5-centimeters (cm)) mesh codend when fishing with selective gear on Georges Bank (GB); and portions of the Gulf of Maine (GOM) Cod Protection Closures. The FMP prohibits sectors from requesting exemptions from permitting restrictions, gear restrictions designed to minimize habitat impacts, and most reporting requirements.

In addition to the approved sectors, there are several state-operated permit banks, which receive allocations based on the history of the permits owned by the states. The final rule implementing Amendment 17 to the FMP allowed a state-operated permit bank to receive an allocation without needing to comply with the administrative and procedural requirements for sectors (77 FR 16942; March 23, 2012). Instead, permit banks are required to submit a list of participating permits to us, as specified in the permit bank's Memorandum of Agreement, to determine the ACE allocated to the permit bank. These allocations may be leased to fishermen enrolled in sectors. State-operated permit banks are no longer approved through the sector approval process, but current state-operated permit banks contribute to the total allocation under the sector system.

We received operations plans and preliminary contracts for fishing years 2021 and 2022 from 16 sectors. The operations plans included 19 exemptions previously requested by sectors, and approved by NMFS, in

fishing year 2020. One sector also submitted a new exemption request for fishing year 2021. We have determined that the 16 sector operations plans and contracts that we received, and the 19 previously approved regulatory exemptions requested, are consistent with the FMP's goals and objectives, and meet sector requirements outlined in the regulations at § 648.87. Consequently, we are approving the 16 sector operations plans, as well as the 19 previously approved regulatory exemptions requested, in this final rule. We are not approving the new sector exemption requested for fishing year 2021. Copies of the operations plans and contracts, and the environmental assessment (EA), are available at: *http://www.regulations.gov* and from NMFS (see **ADDRESSES**).

Catch Limits for Fishing Year 2021

Previously Established Catch Limits

Last year, Framework 59 to the FMP set fishing year 2021 catch limits for 15 groundfish stocks (85 FR 45794; July 30, 2020). The 2021 catch limits for most stocks remain the same as, or similar, to 2020 limits. Framework 59 did not specify a 2021 catch limit for GOM winter flounder, Southern New England/Mid-Atlantic (SNE/MA) winter flounder, redfish, ocean pout, Atlantic wolffish, Eastern GB cod, or Eastern GB haddock. Eastern GB cod and haddock are management units of the GB cod and GB haddock stocks that NMFS manages jointly with Canada, and the shared quota is set annually.

This year, in Framework 61 to the FMP, the Council adopted new or adjusted fishing year 2021 catch limits for: GB haddock; GB yellowtail flounder; GB winter flounder; GOM winter flounder; SNE/MA winter flounder; redfish; Northern windowpane flounder; Southern windowpane flounder; ocean pout; Atlantic halibut; and Atlantic wolffish. Framework 61 would set 2021 catch limits for the two U.S./Canada stocks (Eastern GB cod and Eastern GB haddock). It would adjust the breakdown of sub-components for GB cod, GOM cod, SNE/MA yellowtail flounder, Cape Cod (CC)/GOM yellowtail flounder, witch flounder, and white hake. Framework 61 also included the exemption for sector vessels to target redfish with codend mesh as small as 5.5 inches (13.97 cm) as a universal exemption. We recently received Framework 61 for review from the Council and we will not be able to implement Framework 61 measures, if approved, before May 1, 2021.

As a result, the sector and common pool allocations in this rule are based on the 2021 catch limits set in Framework 59 that will be effective on May 1, 2021, and preliminary 2021 fishing year rosters (Table 1). If we approve Framework 61, the 2021 catch limits announced in this rule for these stocks will change when Framework 61 measures become effective.

The Framework 59 fishing year 2021 ACL for GB yellowtail flounder is 95.4 metric tons (mt), which will be in place on May 1. The Council recommended a fishing year 2021 ACL of 63.6 mt for GB yellowtail flounder in Framework 61. This is a 33-percent decrease, which will go into effect after May 1 if Framework 61 is approved. This adjustment is based on the recommendation of the Transboundary Management Guidance Committee, which is the joint U.S./Canada management body that meets annually to recommend shared quotas for the three transboundary stocks. The Council's recommendations will be further discussed in the Framework 61 proposed rule. We are highlighting this change in this rule because the GB yellowtail flounder sector allocations approved in this rule are based on the higher 2021 catch limits previously approved in Framework 59. If the Council's recommended catch limits become final with no changes, the ACE for this stock will be reduced when Framework 61 is implemented.

Default Catch Limits

This rule also announces default catch limits for GOM winter flounder, SNE/MA winter flounder, redfish, ocean pout, Atlantic wolffish, Eastern GB cod, and Eastern GB haddock. These stocks do not already have a catch limit in place for fishing year 2021. The groundfish regulations implement default catch limits for any stock for which final specifications are not in place by the beginning of the fishing year on May 1. The FMP's default specifications provision sets catch at 35 percent of the previous year's (2020) catch limits, except in instances where the default catch limit would exceed the Council's recommendation. The fishing year 2021 state waters and other sub-components specified for redfish in Framework 59 exceed the Council's fishing year 2021 redfish recommendation in Framework 61 and, as such, these sub-components will be reduced accordingly. The default catch limits are effective from May 1 through July 31, or until the final rule for Framework 61 is implemented if prior to July 31. To comply with these regulations and minimize impacts on the fishery we are announcing these default specifications. If Framework 61 is not in place on or before July 31, all fishing for these stocks will be prohibited beginning August 1.

TABLE 1—NORTHEAST MULTISPECIES CATCH LIMITS FOR 2021

Stock	Total ACL	Groundfish sub-ACL	Preliminary sector sub-ACL	Preliminary common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
GB Cod *	1,234	1,073	1,041	31					19	142
GOM Cod *	523	468	267	9	193				48	7
GB Haddock *	72,699	70,892	69,465	1,428		1,424			0	383
GOM Haddock *	15,843	15,575	10,022	258	5,295	156			56	56
GB Yellowtail Flounder *	116	95	92	3			19	2	0	0
SNE/MA Yellowtail Flounder *	21	15	12	3			2		0	4
CC/GOM Yellowtail Flounder *	787	688	656	32					58	41
American Plaice *	2,740	2,682	2,611	71					29	29
Witch Flounder *	1,414	1,310	1,275	35					44	59
GB Winter Flounder *	545	522	502	21					0	22

TABLE 1—NORTHEAST MULTISPECIES CATCH LIMITS FOR 2021—Continued

Stock	Total ACL	Groundfish sub-ACL	Preliminary sector sub-ACL	Preliminary common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
GOM Winter Flounder*	151	100	95	5	.....	.....	.....	.....	48	2
SNE/MA Winter Flounder*	245	189	166	22	.....	.....	.....	.....	13	43
Redfish*	3,973	3,931	3,880	51	.....	.....	.....	.....	0	0
White Hake*	2,041	2,019	1,995	24	.....	.....	.....	.....	11	11
Pollock*	21,047	19,282	19,092	190	.....	.....	.....	.....	882	882
N Windowpane Flounder*	55	38	na	38	.....	.....	12	.....	1	5
S Windowpane Flounder*	412	48	na	48	.....	.....	143	.....	26	196
Ocean Pout*	42	32	na	32	.....	.....	.....	.....	0	9
Atlantic Halibut*	102	77	na	77	.....	.....	.....	.....	21	4
Atlantic Wolffish	29	29	na	29	.....	.....	.....	.....	0	0

*These catch limits are based on fishing year 2021 Framework 59 and/or default specifications, and will be replaced when the final rule for Framework 61 becomes effective, if approved.

Sector Allocations

This rule allocates ACE to sectors based on the preliminary fishing year 2021 sector rosters and the 2021 catch limits established in Framework 59 and default specifications, as shown in Table 1 above. Any permits that change ownership after the enrollment deadline established by the Regional Administrator (March 8 for fishing year 2021) retain the ability to join a sector through April 30, 2021. All permit holders who have joined a sector for fishing year 2021 have until April 30, 2021, to withdraw and elect to fish in the common pool, although sectors may specify a more restrictive withdrawal date for their members. As a result, the total permits enrolled in sectors for fishing year 2021 could change from the preliminary rosters, although such changes are expected to be minimal based on past fishing years. For fishing year 2022, we will set similar roster deadlines, notify permit holders of the fishing year 2022 deadlines, and allow permit holders to change sectors separate from the annual sector operations plans approval process.

We calculate a sector's allocation for each stock by summing its members' potential sector contributions (PSC) for a stock and then multiplying that total percentage by the available commercial sub-ACL for that stock. Table 2 shows the preliminary total fishing year 2021 PSCs for each sector for fishing year 2021. Tables 3 and 4 show the initial allocations that each sector is allocated, in pounds and metric tons, respectively, for fishing year 2021 based on their preliminary fishing year 2021 rosters and the fishing year 2021 Framework 59 and default specifications. At the start of the 2021 fishing year, we provide final allocations, to the nearest pound, to each sector based on their final May 1 rosters. We use these final allocations, along with later adjustments for ACE transfers, reductions for overages, or increases for carryover from fishing year 2020, to monitor sector catch. We have included the preliminary common pool sub-ACLs in tables 2 through 4 for comparison. These tables do not represent the final allocations for the 2021 fishing year.

We do not assign each permit separate PSCs for Eastern GB cod or Eastern GB haddock; instead, we assign each permit a PSC for the GB cod stock and GB haddock stock. Each sector's GB cod and GB haddock allocations are then divided into an Eastern ACE and a Western ACE, based on each sector's percentage of the GB cod and GB haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL and 6 percent of the GB haddock ACL, the sector is allocated 4 percent of the commercial Eastern U.S./Canada Area GB cod TAC and 6 percent of the commercial Eastern U.S./Canada Area GB haddock TAC as its Eastern GB cod and haddock ACEs. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs. A sector may only harvest its Eastern GB cod and haddock ACEs in the Eastern U.S./Canada Area, but may ''convert,'' or transfer, its Eastern GB cod or haddock allocation into Western GB allocation and fish that converted ACE outside the Eastern GB area.

At the start of fishing year 2021, we may withhold 20 percent of each sector's fishing year 2021 allocation until we finalize fishing year 2020 catch information. We expect to finalize 2020 catch information in summer 2021. We allow sectors to transfer fishing year 2020 ACE for 2 weeks upon our completion of year-end catch accounting to reduce or eliminate any fishing year 2020 overages. If necessary, we reduce any sector's fishing year 2021 allocation to account for a remaining overage in fishing year 2020. Each year of the operations plans, we notify the Council and sector managers of this deadline in writing and announce our final ACE determination on our website at: *https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/groundfish_catch_accounting.*

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Table 2 -- Preliminary Cumulative PSC (percentage) Each Sector Would Receive by Stock for Fishing Year 2021*

Sector Name	MRI Count	GB Cod	GOM Cod	GB Haddock	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
Fixed Gear Sector	66	12.91201525	0.69970954	1.96267839	0.18099559	0.01093447	0.19005237	1.70866378	0.50303247	1.09848991	0.02003390	8.02535090	1.02747169	0.56965180	1.07558798	3.41104460
Maine Coast Community Sector	98	2.46438576	14.12291604	3.41756399	11.05917517	2.62554515	2.56810667	4.98616308	13.90614469	11.13374795	1.20529725	5.56500829	2.00898952	9.66584546	14.16964781	13.34753208
Maine Permit Bank	11	0.13361161	1.15527371	0.04432773	1.12456784	0.01377701	0.03180705	0.31794656	1.16407704	0.72688466	0.00021715	0.42663133	0.01789123	0.82190541	1.65423037	1.69506266
Mooncusser Sector	48	11.95940509	6.22441724	3.83051665	3.68870155	1.22307304	0.85547320	3.01233271	0.85789918	1.81231812	0.94550207	2.84735133	2.44445581	4.74534752	10.66178384	10.52833852
NEFS 2	128	6.50411103	26.71426695	10.68698041	22.24964932	1.90743001	1.65680516	25.11745967	11.19111752	14.64457019	3.21718005	24.58414243	4.17527656	15.19764105	8.97846674	14.53838529
NEFS 4	58	7.40278746	11.14715279	5.81741902	8.87488520	2.16178984	2.26424835	6.38868785	9.51519683	8.85678156	0.69256896	7.43025795	0.99122070	6.67292713	8.26904075	6.86549108
NEFS 5	25	0.49539649	0.32176491	0.81722278	0.11414108	1.27625199	20.09778839	0.94754372	0.48057213	0.69952929	0.43644335	0.84397461	12.16641089	0.01846644	0.09533454	0.04643601
NEFS 6	23	3.11400760	2.92154892	3.58633261	4.39667574	3.30346794	5.11479613	4.18474608	4.55131759	6.00691065	1.72190154	4.75208259	1.90633969	6.81082532	4.52244826	3.66490102
NEFS 7	7	0.46305698	0.02291312	0.39735538	0.01682579	1.30011492	1.03798542	0.05122608	0.25069186	0.25401118	0.30163925	0.05425034	0.18875853	0.15784019	0.07884075	0.18125420
NEFS 8	52	9.74740165	2.36155604	9.19478219	5.08770917	22.13250390	7.55578310	6.88682924	7.61264285	6.36103710	29.74215982	3.95221384	10.21118534	5.31534068	4.49126659	4.00416803
NEFS 10	29	0.52585353	2.47139968	0.17673209	1.28210628	0.00114846	0.54787117	4.28071114	1.08110214	2.04602336	0.01083157	9.10605344	0.60104219	0.33492866	0.65504499	0.76337372
NEFS 11	46	0.39658325	11.79843505	0.03473420	2.82822092	0.00149117	0.01148641	2.44380248	1.59139809	1.60534702	0.00312600	2.05385292	0.02127503	1.93209436	4.43363277	8.87482081
NEFS 12	22	0.62936609	3.13340099	0.09375956	1.08960389	0.00042969	0.03423699	8.58774919	0.79724602	0.62375273	0.00060545	13.19945544	0.25920606	0.22794000	0.29614103	0.77811802
NEFS 13	70	12.65390016	0.80182096	21.35179272	0.97739231	36.32284531	23.98638456	7.00125506	8.74395988	9.65967443	19.43367782	2.32792940	17.66348486	4.43539316	2.27032027	2.70789206
New Hampshire Permit Bank	4	0.00082216	1.14551884	0.00003406	0.03234889	0.00002026	0.00001788	0.02180780	0.02847787	0.00615970	0.00000324	0.06070545	0.00003630	0.01940243	0.08135666	0.11135242
Sustainable Harvest Sector 1	30	5.57899029	2.98581817	7.55457484	9.03142800	3.19074027	1.07671984	2.83579743	11.36677073	9.28674073	7.82278738	2.56491779	3.04430302	8.25371859	12.69547070	6.46257663
Sustainable Harvest Sector 2	28	3.67707499	1.67621458	1.80758272	1.49630004	5.08889227	4.55761667	5.67454721	2.88513497	2.46063067	8.67082704	4.21283994	8.32194044	1.13510819	1.90338847	1.27911759
Sustainable Harvest Sector 3	63	18.02359057	6.54375460	26.93205684	22.87530816	14.88480093	8.95238546	11.40874432	20.80260202	20.03396152	21.25890798	3.46492030	22.96330579	32.07329493	21.71986062	19.02302912
Common Pool	501	3.31764005	3.75211789	2.29355383	3.59396507	4.55474335	19.46043519	4.14398660	2.67061614	2.68342921	4.51629019	4.52806171	11.98740637	1.61232867	1.94813686	1.71710615

* The data in this table are based on preliminary fishing year 2021 sector rosters.

Table 3 -- Preliminary ACE (in 1,000 lbs), by Stock, for Each Sector for Fishing Year 2021*#^

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	19	287	4	245	2,822	41	0	0	26	30	32	0	18	4	49	48	1,450
MCCS	4	55	86	427	4,914	2,507	6	1	76	822	322	14	12	8	838	631	5,674
MPB	0	3	7	6	64	255	0	0	5	69	21	0	1	0	71	74	721
Mooncusser	17	265	38	479	5,508	836	3	0	46	51	52	11	6	10	411	475	4,476
NEFS 2	9	144	162	1,336	15,367	5,043	4	1	381	662	423	37	54	17	1,317	400	6,180
NEFS 4	11	164	68	727	8,365	2,012	5	1	97	563	256	8	16	4	578	368	2,919
NEFS 5	1	11	2	102	1,175	26	3	7	14	28	20	5	2	51	2	4	20
NEFS 6	5	69	18	448	5,157	997	7	2	63	269	174	20	11	8	590	201	1,558
NEFS 7	1	10	0	50	571	4	3	0	1	15	7	3	0	1	14	4	77
NEFS 8	14	216	14	1,149	13,221	1,153	47	3	104	450	184	343	9	42	461	200	1,702
NEFS 10	1	12	15	22	254	291	0	0	65	64	59	0	20	2	29	29	325
NEFS 11	1	9	72	4	50	641	0	0	37	94	46	0	5	0	167	197	3,773
NEFS 12	1	14	19	12	135	247	0	0	130	47	18	0	29	1	20	13	331
NEFS 13	18	281	5	2,669	30,702	222	76	8	106	517	279	224	5	73	384	101	1,151
NHPB	0	0	7	0	0	7	0	0	0	2	0	0	0	0	2	4	47
SHS 1	8	124	18	944	10,863	2,047	7	0	43	672	268	90	6	13	715	565	2,747
SHS 2	5	82	10	226	2,599	339	11	2	86	171	71	100	9	35	98	85	544
SHS 3	26	400	40	3,367	38,726	5,185	31	3	173	1,230	579	245	8	95	2,780	967	8,087
Common Pool	5	74	23	287	3,298	815	10	7	63	158	78	52	10	50	140	87	730
Sector Total	141	2,146	584	12,214	140,493	21,851	201	27	1,454	5,755	2,811	1,100	211	366	8,527	4,365	41,780

* The data in this table are based on preliminary fishing year 2021 sector rosters.

Numbers are rounded to the nearest thousand pounds. In some cases, this table shows an allocation of 0, but that sector may be allocated a small amount of that stock in tens or hundreds pounds.

^ The data in the table represent the preliminary total allocations to each sector. Final allocations will be determined using final fishing year 2021 rosters.

Table 4 -- Preliminary ACE (in metric tons), by Stock, for Each Sector for Fishing Year 2021*#^

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	9	130	2	111	1,280	19	0	0	12	13	14	0	8	2	22	22	658
MCCS	2	25	39	194	2,229	1,137	3	0	34	373	146	6	6	4	380	286	2,574
MPB	0	1	3	3	29	116	0	0	2	31	10	0	0	0	32	33	327
Mooncusser	8	120	17	217	2,498	379	1	0	21	23	24	5	3	5	187	215	2,030
NEFS 2	4	65	74	606	6,970	2,287	2	0	173	300	192	17	25	8	597	181	2,803
NEFS 4	5	75	31	330	3,794	912	2	0	44	255	116	4	7	2	262	167	1,324
NEFS 5	0	5	1	46	533	12	1	3	7	13	9	2	1	23	1	2	9
NEFS 6	2	31	8	203	2,339	452	3	1	29	122	79	9	5	4	268	91	707
NEFS 7	0	5	0	23	259	2	1	0	0	7	3	2	0	0	6	2	35
NEFS 8	6	98	7	521	5,997	523	21	1	47	204	83	155	4	19	209	91	772
NEFS 10	0	5	7	10	115	132	0	0	29	29	27	0	9	1	13	13	147
NEFS 11	0	4	32	2	23	291	0	0	17	43	21	0	2	0	76	90	1,711
NEFS 12	0	6	9	5	61	112	0	0	59	21	8	0	13	0	9	6	150
NEFS 13	8	127	2	1,211	13,926	100	35	4	48	235	127	102	2	33	174	46	522
NHPB	0	0	3	0	0	3	0	0	0	1	0	0	0	0	1	2	21
SHS 1	4	56	8	428	4,927	929	3	0	20	305	122	41	3	6	324	256	1,246
SHS 2	2	37	5	102	1,179	154	5	1	39	77	32	45	4	16	45	38	247
SHS 3	12	181	18	1,527	17,566	2,352	14	1	78	558	262	111	3	43	1,261	439	3,668
Common Pool	2	33	10	130	1,496	369	4	3	29	72	35	24	5	23	63	39	331
Sector Total	64	973	265	5,540	63,726	9,911	91	12	660	2,611	1,275	499	96	166	3,868	1,980	18,951

* The data in this table are based on preliminary fishing year 2021 sector rosters.

Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the preliminary total allocations to each sector. Final allocations will be determined using final fishing year 2021 rosters.

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Announcement of our Electronic Monitoring Determination

Regulations implementing the sector program for the Northeast multispecies fishery under Amendment 16 to the FMP allow the use of electronic monitoring (EM) to meet sector monitoring requirements provided that the agency deems it sufficient for a specific gear type and area fished. Using the process and authority granted to us in Amendment 16 to the Northeast Multispecies FMP, and as described in regulations at § 648.87(b)(1)(v)(B), we determined that the EM audit model is sufficient for use in place of at-sea monitoring (ASM) and announced our determination in the proposed rule to approve sector operations plans for fishing years 2021 and 2022 (86 FR 16686; March 31, 2021). The proposed rule described our rationale, as well as the operational standards and requirements of an EM audit model program that meets sector monitoring requirements. The full details were included in the proposed rule and are not repeated here. This final rule approves amendments to the regulations, implemented under our section 305(d) authority in the Magnuson-Stevens Act, to make changes necessary to carry out the FMP. These adjustments clarify the use of EM for sector monitoring as described in the regulations at § 648.87 and ensure the FMP is implemented in accordance with the Magnuson-Stevens Act. We are implementing these changes in conjunction with the sector rule for expediency purposes.

Sector Operations Plans and Contracts

We are approving 16 sector operations plans and contracts for fishing years 2021 and 2022. All 16 sectors were active in fishing years 2019 and 2020. In order to approve a sector's operations plan for fishing years 2021 and 2022, we consider whether a sector's plan is consistent with regulatory requirements and FMP objectives, and whether it has been compliant with reporting requirements from previous years, including the year-end reporting requirements found at § 648.87(b)(1)(vi)(C). Approved operations plans contain the rules under which each sector will fish, and also provide the legal contract that binds each member to the sector for the length of the sector's operations plan. Each sector's operations plan, and each sector's members, must comply with the regulations governing sectors, found at § 648.87. In addition, each sector must conduct fishing activities as detailed in its approved operations plan.

Participating vessels are required to comply with all pertinent Federal fishing regulations, except as specifically exempted in the letter of authorization (LOA) issued by the Regional Administrator, which details any approved sector exemptions from the regulations. If, during a fishing year, or between fishing years 2021 and 2022, a sector requests an exemption that we have already granted, or proposes a change to administrative provisions, we may amend the sector operations plans. Should any such amendments require modifications to LOAs, we will include these changes in updated LOAs and provide them to the appropriate sectors.

As in previous years, we retain the right to revoke exemptions in-season if: We determine that the exemption jeopardizes management measures, FMP objectives, or rebuilding efforts; the exemption results in unforeseen negative impacts on other managed fish stocks, habitat, or protected resources; the exemption causes enforcement concerns; catch from trips using the exemption cannot be adequately monitored; or a sector is not meeting certain administrative or operational requirements. If it becomes necessary to revoke an exemption, we will do so through a process consistent with the Administrative Procedure Act.

Each sector is required to ensure that it does not exceed its ACE during the fishing year. Sector vessels are required to retain all legal-sized allocated Northeast multispecies stocks, unless a sector is granted an exemption allowing its member vessels to discard legal-sized unmarketable fish at sea. Catch (defined as landings and discards) of all allocated Northeast multispecies stocks by a sector's vessels count against the sector's allocation. Groundfish catch from a sector trip targeting non-groundfish species will be deducted from the sector's ACE because these are groundfish trips using gear capable of catching groundfish. Catch from a non-sector trip in an exempted fishery does not count against a sector's allocation and is assigned to a separate ACL sub-component to account for any groundfish bycatch that occurs in non-groundfish fisheries.

Each sector operations plan submitted for fishing years 2021 and 2022 states that the sector may withhold an initial reserve from the sector's ACE sub-allocation to each individual member to prevent the sector from exceeding its ACE. A sector and sector members can be held jointly and severally liable for ACE overages, discarding legal-sized fish, and/or misreporting catch (landings or discards). Each sector contract provides procedures for sector enforcement of its rules, explains sector monitoring and reporting requirements, provides sector managers with the authority to issue stop fishing orders to sector members who violate provisions of the operations plan and contract, and presents a schedule of penalties that managers may levy on members for sector plan violations.

Sectors are required to monitor their allocations and catch. To help ensure that a sector does not exceed its ACE, each sector operations plan explains sector monitoring and reporting requirements, including a requirement to submit weekly catch reports to us. If a sector reaches an ACE threshold (specified in the operations plan), the sector must provide us with sector allocation usage reports on a daily basis. Once a sector's allocation for a particular stock is caught, that sector is required to cease all sector fishing operations in that stock area until it acquires more ACE, likely by an ACE transfer between sectors. Within 60 days of when we complete year-end catch accounting, each sector is required to submit an annual report detailing the sector's catch (landings and discards), sector enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts of each sector.

Industry-Funded Monitoring Programs

Sectors are responsible for designing, implementing, and funding a monitoring program that will provide the level of ASM coverage specified by NMFS for that year. We are required to determine a level of ASM coverage using a process described in Framework 55 (81 FR 26412; May 2, 2016) that provides a reliable estimate of overall catch by sectors needed for monitoring ACEs and ACLs while minimizing the cost burden to sectors and NMFS to the extent practicable. Sectors are responsible for the at-sea portion of costs associated with the sector's monitoring program(s), even in years when reimbursement funds are available.

In fishing years 2010 and 2011, we funded an ASM program with a target ASM coverage level of 30 percent of all trips. In addition, we provided 8-percent observer coverage through the Northeast Fishery Observer Program (NEFOP), which helps to support the Standardized Bycatch Reporting Methodology (SBRM) and stock assessments. This resulted in an overall target coverage level of 38 percent for fishing years 2010 and 2011, from the combined ASM and NEFOP. Beginning

in fishing year 2012, we have conducted an annual analysis to determine the total target coverage level. Table 5 depicts the annual target coverage levels. Industry has been required to pay for their ASM coverage costs since 2012, while we continued to fund NEFOP coverage. However, we were able to fund the industry's portion of ASM costs and NEFOP coverage in fishing years 2012 through most of 2015. Industry paid for their portion of the ASM program beginning in March 2016. In June 2016, after determining that the SBRM monitoring program could be fully funded with additional funding remaining, we announced that we had funds available to offset some of industry's costs of the groundfish ASM program in 2016. We distributed funds held by the Atlantic States Marine Fisheries Commission in a grant that provided for reimbursing sectors for 85 percent of their ASM costs for 10 months of the fishing year. In fishing year 2017, using leftover funds from the 2016 grant, sectors were reimbursed for 60 percent of industry costs in fishing year 2017. Fishing effort was lower than expected in the first few months of the fishing year, and sectors were ultimately retroactively reimbursed an additional estimated 25 percent of industry's 2017 costs, which exhausted the remaining available SBRM funds. In fiscal years 2018, 2019, 2020, and 2021, Congress appropriated $10.3 million for groundfish ASM. These funds were used to fully reimburse industry costs in fishing years 2018, 2019, and 2020. Although the exact costs of groundfish monitoring for fishing year 2021 are not known at this time, we expect there will be sufficient funds to fully reimburse industry's costs for ASM and EM based on our experience in previous fishing years.

TABLE 5—HISTORIC TARGET COVERAGE LEVEL FOR MONITORING

Fishing year	Total target coverage level (percent)	ASM target coverage level (percent)	NEFOP target coverage level (percent)
2010	38	30	8
2011	38	30	8
2012	25	17	8
2013	22	14	8
2014	26	18	8
2015	16	12	4
2016	14	10	4
2017	16	8	8
2018	15	10	5
2019	31	(*)	(*)
2020	40	(*)	(*)

* Beginning in fishing year 2019, assignment of NEFOP coverage changed in a way that no longer provided a single coverage target across all sectors. As a result, the total target coverage level was no longer partitioned into fixed ASM and NEFOP target coverage levels.

On March 20, 2020, we issued a fleet-wide observer waiver in response to local travel restrictions and limits on gatherings. During this time, we worked with monitoring service providers to develop observer redeployment plans, finalize internal policies to promote safe and effective redeployment, and conduct outreach to industry. We redeployed observers on August 14, 2020. A vessel receives a waiver if an observer or ASM is not available for deployment; or the observer provider cannot meet the safety protocols imposed by a state on the commercial fishing crew or by the vessel owner or operator on the crew. Service provider companies have experienced significant staff attrition this year as a result of the limited amount of work available, and will need to hire additional staff to meet future specified coverage levels. Given the circumstances, we do not expect sectors to meet the 40-percent target coverage level in fishing year 2020. We expect to work with sectors and service provider companies through the remainder of the year to increase coverage levels to the extent possible, and to ensure they meet the specified coverage level when normal operations resume.

For fishing year 2021, sector vessels may choose to use either ASM or the EM audit model to meet monitoring requirements, provided that the sector has a corresponding monitoring program approved as part of its operations plan. On January 26, 2021, we announced that the total target ASM coverage level is 40 percent for fishing year 2021. Vessels that choose to use ASM to meet monitoring requirements will have a target coverage level of 40 percent for all sector groundfish trips. Vessels that choose to use EM to meet monitoring coverage requirements must use cameras and adhere to catch handling protocols as described in their vessel monitoring plans for all groundfish trips. Only a subset of the submitted trips will be selected for review to monitor groundfish discards for catch accounting. For fishing year 2021, NMFS will randomly select 50 percent of trips for review by a third-party service provider. A subset of the selected trips will undergo a secondary review by NMFS to monitor the third-party service provider's performance. The vessel owner or operator and the third-party service provider must provide the EM data for any given trip to NMFS, and its authorized officers and designees, upon request including, but not limited to, trips selected for secondary review. The fishing year 2022 selection rate for third-party review will be announced during fishing year 2021. The selection rate may vary annually based on vessel performance and less than 100 percent of trips would be reviewed, consistent with regulations at 648.87(b)(1)(v)(B)(*1*).

Industry-Funded Monitoring Programs

The operations plans submitted by sectors include industry-funded monitoring plans for fishing year 2021. As in previous years, we gave sectors the option to design their own monitoring program(s) in compliance with regulations or elect to adopt the NMFS-designed ASM and/or EM audit model program(s). In the event that we cannot approve a proposed monitoring program, we asked all sectors to include an option to select a current NMFS-designed monitoring program as a fail-safe.

All active sectors submitted an ASM plan as part of their draft operations plans. Sectors that operate only as permit banks, and explicitly prohibit fishing in their operations plans, are not required to include provisions for an

ASM program. Similar to previous years, some sectors chose to use the NMFS-designed ASM program while others proposed programs of their own design. The NMFS-designed ASM program is the same program that we have used in previous fishing years. Sector-designed ASM programs for fishing years 2021 and 2022 were similar to those approved in past years. We reviewed all sector-proposed ASM programs for consistency with ASM requirements.

Sustainable Harvest Sectors 1, 2, and 3; the GB Cod Fixed Gear Sector, the Maine Coast Community Sector, and Northeast Fishery Sectors (NEFS) 5, 10, 11, and 13 will use the NMFS-designed ASM program. NEFS 2, 6, 7, 8, and 12 will use a sector-designed ASM program, which states that they will: Contract with a NMFS-approved ASM provider; meet the specified coverage level; and utilize the Pre-Trip Notification System for random selection of monitored trips and notification to providers. These ASM programs also include additional protocols for ASM coverage waivers, incident reporting, and safety requirements for their sector managers and members. We are approving these programs because they are consistent with the goals and objectives of ASM and regulatory requirements.

Seven sectors also submitted an EM plan as part of their draft operations plans. Of these sectors, six sectors, Sustainable Harvest Sectors 1, 2, and 3; the GB Cod Fixed Gear Sector, the Maine Coast Community Sector, and NEFS 5, chose to use the NMFS-designed EM audit model program. An additional sector, NEFS 10, subsequently submitted a request to amend its operations plan to include the NMFS-designed EM audit model program. We are approving this program for these sectors, including NEFS 10, because it is consistent with goals and objectives of monitoring and regulatory requirements.

One sector, NEFS 2, proposed an EM program of its own design. The proposed program maintained key elements of the NMFS-designed EM audit model program as the basis for its proposed EM program with modifications. We are approving NEFS 2's proposed program, which states that it will: Contract with an approved service provider; utilize PTNS as required; run cameras on 100 percent of groundfish trips for EM vessels; and trips will be audited at a rate of 50 percent. NEFS 2's program also establishes internal protocols and controls for the sector to manage its member vessels' participation in EM.

Previously Granted Exemptions for Fishing Years 2021 and 2022

Previously Granted Exemptions Granted for Fishing Years 2021 and 2022 (1–19)

We are granting exemptions from the following requirements for fishing years 2021 and 2022, all of which have been requested and granted in previous years:

(1) 120-day block out of the fishery required for Day gillnet vessels;

(2) 20-day spawning block out of the fishery required for all vessels;

(3) Limits on the number of gillnets for Day gillnet vessels outside the GOM;

(4) Prohibition on a vessel hauling another vessel's gillnet gear;

(5) Limits on the number of gillnets that may be hauled on GB when fishing under a Northeast multispecies/monkfish DAS;

(6) Limits on the number of hooks that may be fished;

(7) DAS Leasing Program length and horsepower restrictions;

(8) Prohibition on discarding;

(9) Gear requirements in the Eastern U.S./Canada Management Area;

(10) Prohibition on a vessel hauling another vessel's hook gear;

(11) The requirement to declare an intent to fish in the Eastern U.S./Canada Special Access Program (SAP) and the Closed Area (CA) II Yellowtail Flounder/Haddock SAP prior to leaving the dock;

(12) Seasonal restrictions for the Eastern U.S./Canada Haddock SAP;

(13) Seasonal restrictions for the CA II Yellowtail Flounder/Haddock SAP; (14) sampling exemption;

(15) 6.5-inch minimum mesh size requirement for trawl nets to allow a 5.5-inch codend on directed redfish trips;

(16) Prohibition on combining small-mesh exempted fishery and sector trips in SNE;

(17) Extra-large mesh requirement to target dogfish on trips excluded from ASM in SNE and Inshore GB;

(18) Requirement that Handgear A vessels carry a Vessel Monitoring System (VMS) unit when fishing in a single broad stock area (BSA); and

(19) Limits on the number of gillnets for Day gillnet vessels in the GOM.

A detailed description of the previously granted exemptions and supporting rationale can be found in the applicable final rules identified in Table 6 below.

TABLE 6—EXEMPTIONS FROM PREVIOUS FISHING YEARS THAT ARE GRANTED IN FISHING YEARS 2021 AND 2022

Exemptions	Rulemaking	Date of publication	Citation
1–2, 4–9	Fishing Year 2011 Sector Operations Final Rule	April 25, 2011	76 FR 23076.
10–11	Fishing Year 2012 Sector Operations Final Rule	May 2, 2012	77 FR 26129.
12–14	Fishing Year 2013 Sector Operations Interim Final Rule	May 2, 2013	78 FR 25591.
3, 15–16	Fishing Years 2015–2016 Sector Operations Final Rule	May 1, 2015	80 FR 25143.
17	Framework 55 Final Rule	May 2, 2016	81 FR 26412.
18	Amendment 18 Final Rule	April 21, 2017	82 FR 18706.
19	Fishing Year 2018 Sector Operations Final Rule	May 1, 2018	83 FR 18965.

Northeast Multispecies **Federal Register** documents can be found at *https://www.fisheries.noaa.gov/management-plan/northeast-multispecies-management-plan*.

New Exemption Requests We Will Not Approve for Fishing Year 2021

Minimum Mesh Size for Gillnets Fished in Georges Bank

One sector requested a new exemption for fishing year 2021 to allow sector vessels to use 6.0-inch (15.2-cm) mesh size to target groundfish in the GB BSA. We denied this request because we are concerned that allowing the use of gillnets smaller than the 6.5-inch (16.5-cm) minimum mesh size may have an impact on GB cod, given that this stock is overfished and overfishing is occurring, and there is limited data available to evaluate this exemption request. In addition, changes in the location and intensity of gillnet fishing may have impacts on protected resources, particularly North Atlantic right whales, which are critically endangered and are present in the requested area during certain times of year. We may reevaluate this exemption request in a future action, should further information become available.

Additional details on the exemption request, and our rationale for denying it, can be found in the proposed rule to approve fishing years 2021 and 2022 sector operations plans (86 FR 16686; March 31, 2021).

Additional Sector Operations Plan Provisions

Inshore GOM Restrictions

Several sectors proposed an operations plan provision to limit and more accurately document a vessel's behavior when fishing in an area they define as the inshore portion of the GOM BSA, or the area to the west of 70°15′ W long. As in fishing years 2019 and 2020, we are approving this provision, but a sector may elect to remove this provision in the final version of its operations plan, and it is not a requirement under NMFS regulations.

Under this provision, a vessel that is carrying an observer or ASM would remain free to fish in all areas, including the inshore GOM area, without restriction. If a vessel is not carrying an observer or ASM and fishes any part of its trip in the GOM west of 70°15′ W long., the vessel would be prohibited from fishing outside of the GOM BSA. Also, if a vessel is not carrying an observer or ASM and fishes any part of its trip outside the GOM BSA, this provision would prohibit a vessel from fishing west of 70°15′ W long. within the GOM BSA. The approved provision includes a requirement that a vessel declare whether it intends to fish in the inshore GOM area through the trip start hail using its VMS unit prior to departure. We provide sector managers with the ability to monitor this provision through the Sector Information Management Module, a website where we also provide roster, trip, discard, and observer information to sector managers. A sector vessel may use a federally-funded NEFOP observer or ASM on these trips because we believe this option will not create bias in discard estimates, as fishing behavior is expected to be consistent with the standard fishery requirements such as minimum gear and fish sizes as a result of exercising this option.

Prohibition on a Vessel Hauling Another Vessel's Trap Gear To Target Groundfish

Several sectors have requested a provision to allow a vessel to haul another vessel's fish trap gear, similar to the current exemptions that allow a vessel to haul another vessel's gillnet gear or hook gear. These exemptions have generally been referred to as ''community'' gear exemptions. Regulations at § 648.84(a) require a vessel to mark all bottom-tending fixed gear, which includes fish trap gear used to target groundfish. This requirement helps protect against illegal hauling of gear by vessels that do not own the gear and are not authorized to tend it. To facilitate enforcement of § 648.84(a) and use of this exemption, we are requiring each vessel authorized to haul another's gillnet gear to tag that gear, similar to how this sector operations plan provision was implemented in fishing years 2014 through 2020. This allows one vessel to deploy the trap gear and another vessel to haul the trap gear, provided both vessels tag the gear prior to deployment. This requirement is included in the sector's operations plan to provide the opportunity for the sector to monitor the use of this provision and facilitate the Office of Law Enforcement and the U.S. Coast Guard's enforcement of the marking requirement. We do not expect this provision to increase effort or the amount of fish trap gear used. Instead, we expect that it will provide an efficiency and would allow a vessel to retrieve gear as a convenience.

Comments and Responses

We received a total of two comments: One from the Northeast Sector Service Network (NESSN), and one from a member of the public. Only comments related to the proposed measures are addressed below.

Sector Operations Plans and ACE Allocations

Comment 1: The comment submitted by a member of the public pertains to quota allocations. The commenter states that quotas are too high and lead to overfishing, and that all quotas should be reduced by 50 percent.

Response: This rulemaking does not set fishing year 2021 quotas for the groundfish fishery. This action approves sector operations plans for fishing years 2021 and 2022; allocates preliminary ACE to groundfish sectors based on ACLs (*i.e.,* quotas) developed by the New England Fishery Management Council and implemented in Framework 59 to the FMP; announces default specifications for seven groundfish stocks as required by regulation; and amends the regulations in order to implement EM. The ACLs are set to prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best scientific information available. Fishing year 2021 quota allocations are developed through a separate rulemaking.

Comment 2: NESSN supports approval of fishing years 2021 and 2022 sector operations plans for NEFS 2, 4, 6, 7, 8, and 12. NESSN did not comment on the approval of the other sectors' operations plans.

Response: This rule approves fishing years 2021 and 2022 sector operations plans for NEFS 2, 4, 6, 7, 8 and 12.

Comment 3: NESSN supports approval of all proposed exemptions.

Response: This rule approves 19 regulatory exemptions that were previously approved for fishing year 2020. This rule does not approve the new exemption requested by a sector for fishing year 2021 to allow sector vessels to use gillnets as small as 6.0-inches (15.2-cm) to target haddock in the GB BSA. The reason for NMFS's disapproval is provided in the discussion of exemptions above and is not repeated here.

Comment 4: NESSN encourages NMFS to implement Framework 61 to the FMP prior to July 31, when the default specifications expire.

Response: NMFS received the preliminary submission of Framework 61 from the New England Fishery Management Council for review in late March. We will make every effort to complete the rulemaking process as quickly as possible and prior to July 31, when the default regulations are set to expire.

Announcement of our Electronic Monitoring Determination

Comment 5: NESSN supports approval of the EM audit model program developed and submitted by NEFS 2 because it provides the sector with additional control and oversight.

Response: This rule approves the EM audit model program proposed by NEFS 2. NMFS' EM program standards did not specify what type of control and oversight sectors should exert over their membership. This is consistent with the general structure of the sector system, which places this type of self-governance and management in the sectors' purview, as opposed to NMFS.

Comment 6: NESSN commented on the implementation details of the EM audit model program, including suggestions for different approaches to follow when expanding the maximized retention EM program in the future. NESSN's suggestions are intended to minimize disruptions to sector planning and operations, given both NMFS' and sectors' administrative workload.

Response: We are committed to working with all sectors that chose to include EM plans in their operations plans, and those sectors interested in it in the future, to ensure that we improve

the overall implementation of EM in the fishery over time. Implementation of this program will improve each year, and we intend to work closely with sectors to improve and expand EM, including the maximized retention EM program.

Changes From the Proposed Rule

In the proposed rule, we considered approving EM plans submitted by seven sectors: Sustainable Harvest Sectors 1, 2, and 3; the GB Cod Fixed Gear Sector; the Maine Coast Community Sector; NEFS 2; and NEFS 5. However, NEFS 10 subsequently submitted a request to amend its operations plan to include the NMFS-designed EM audit model program. We approved this request because the NMFS-designed EM audit model program is consistent with the goals and objectives of monitoring and regulatory requirements. As a result, this final rule approves EM plans for eight sectors. Additional sectors may request an amendment to their operations plans to include EM during the 2021 or 2022 fishing year, if desired.

The allocations published in the proposed rule were based on final fishing year 2020 sector rosters because we had not yet received preliminary rosters for the 2021 fishing year. The deadline for preliminary sector roster submissions for fishing year 2021 was March 8, 2021. The ACE allocated to each sector has been updated in the final rule to reflect preliminary sector enrollment for the 2021 fishing year.

There are no other changes from the proposed measures.

Classification

NMFS is issuing this rule pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act. This action amends the regulations to clearly implement the use of EM to meet sector monitoring requirements as allowed by the Northeast Multispecies FMP. These adjustments are necessary to implement the FMP in accordance with the Magnuson-Stevens Act. The NMFS Assistant Administrator has determined that this final rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

There is good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this final rule. This action approves fishing years 2021 and 2022 operations plans for 16 groundfish sectors in the Northeast multispecies fishery and allocates ACE for fishing year 2021. This rulemaking was delayed by the sector roster deadline (March 8, 2021). We must have preliminary sector rosters for the upcoming fishing year in order to allocate preliminary ACE to sectors. Sectors are prohibited from fishing without an approved operations plan and ACE allocations, as such, timely implementation is necessary to ensure that sectors may fish at the start of the 2021 fishing year on May 1, 2021. If sectors were prohibited from fishing while waiting for the rule to take effect, there would be significant disruption to the fishery along with negative economic impacts, thus undermining the intent of the rule. The approval of sector operations plans occurs annually in accordance with regulations implementing Amendment 16 to the Northeast Multispecies FMP. Industry members and other stakeholders are aware of and familiar with these proceedings and expect them to occur in a timely manner.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number(s): 0648–0605; Northeast Multispecies Amendment 16.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 26, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.2, add definitions for ''electronic monitoring data,'' ''raw,'' and ''video reviewer'' in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Electronic monitoring data means the data that are created in the collection of fishery-dependent data by electronic monitoring systems during fishing operations, including the video, images, and other sensor data, as well as the metadata that provides information (*e.g.,* trip sail date, vessel information) about the raw data.

* * * * *

Raw, with respect to electronic monitoring, means the original, unaltered video footage, images, and other sensor data collected by an electronic monitoring system.

* * * * *

Video reviewer means any electronic monitoring service provider staff approved/certified by NMFS for providing electronic monitoring video review services consistent with electronic monitoring program requirements.

* * * * *

■ 3. In § 648.14, revise paragraph (k)(14)(x) and add paragraphs (k)(14)(xii) and (xiii) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(14) * * *

(x) Leave port to begin a trip before an at-sea monitor has arrived and boarded the vessel if assigned to carry an at-sea monitor for that trip, or without an operational electronic monitoring system installed on board, as specified in § 648.87(b)(5)(iii)(A).

* * * * *

(xii) Fail to comply with the electronic monitoring system requirements as specified in § 684.87(b)(5)(iii)(A)(*2*).

(xiii) Fail to comply with the vessel monitoring plan requirements as specified in § 648.87(b)(5)(iii)(A)(*3*).

* * * * *

■ 4. In § 648.87:

■ a. Revise paragraphs (b)(1)(v)(B) introductory text, (b)(1)(v)(B)(*1*) introductory text, (b)(4) introductory text, (b)(4)(i)(D) through (J), (b)(4)(ii) introductory text, (b)(4)(ii)(A)(*6*), (b)(4)(ii)(B) through (D), (b)(4)(ii)(G), and (b)(4)(ii)(H)(*1*);

■ b. Add paragraphs (b)(4)(ii)(H)(*4*) and (b)(4)(iv); and

■ c. Revise paragraphs (b)(5)(iii)(A), (b)(5)(iii)(B)(*2*), and (b)(5)(iv)(B).

The revisions and additions read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(B) *Independent third-party monitoring program.* A sector must develop and implement an at-sea or electronic monitoring program that is satisfactory to, and approved by, NMFS for monitoring catch and discards and utilization of sector ACE, as specified in this paragraph (b)(1)(v)(B). The primary goal of the at-sea/electronic monitoring program is to verify area fished, as well as catch and discards by species and gear type, in the most cost-effective means practicable. All other goals and objectives of groundfish monitoring programs at § 648.11(l) are considered equally-weighted secondary goals. The details of any at-sea or electronic monitoring program must be specified in the sector's operations plan, pursuant to paragraph (b)(2)(xi) of this section, and must meet the operational standards specified in paragraph (b)(5) of this section. Electronic monitoring may be used in place of at-sea monitors if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. The level of coverage for trips by sector vessels is specified in paragraph (b)(1)(v)(B)(*1*) of this section. The at-sea/electronic monitoring program shall be reviewed and approved by the Regional Administrator as part of a sector's operations plans in a manner consistent with the Administrative Procedure Act. A service provider providing at-sea or electronic monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and be approved by NMFS in a manner consistent with the Administrative Procedure Act.

(*1*) *Coverage levels.* Except as specified in paragraph (b)(1)(v)(B)(*1*)(*i*) of this section, any service provider providing at-sea or electronic monitoring services required under this paragraph (b)(1)(v)(B)(*1*) must provide coverage that is fair and equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within each sector and by all operations of vessels operating in each sector throughout the fishing year. Coverage levels for an at-sea or electronic monitoring program, including video review requirements, shall be specified by NMFS, pursuant to paragraph (b)(1)(v)(B)(*1*)(*i*) of this section, but shall be less than 100 percent of all sector trips. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip. If an at-sea monitor is assigned to a particular trip, a vessel may not leave port without the at-sea monitor on board. If a vessel is using electronic monitoring to comply with the monitoring requirements of this part, it may not leave port without an operational electronic monitoring system on board.

* * * * *

(4) *Independent third-party monitoring provider standards.* Any service provider intending to provide at-sea/electronic monitoring services described in paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers, at-sea monitors, or video reviewers as eligible to provide sector monitoring services specified in this part and can disapprove/decertify service providers, individual at-sea monitors, or video reviewers through notice in writing to individual service providers/monitors/video reviewers if the following criteria are no longer being met:

(i) * * *

(D) A statement, signed under penalty of perjury, from each owner, board member, and officer describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer, at-sea monitor, or video reviewer; or as an observer, at-sea, or electronic monitoring service provider;

(E) A description of any prior experience the applicant may have in placing individuals or monitoring equipment in remote field and/or marine work environments including, but not limited to, recruiting, hiring, deployment, equipment installation and maintenance, and personnel administration;

(F) A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring service provider and the arrangements to be used, including whether the service provider is able to offer at-sea or electronic monitoring services;

(G) Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover at-sea monitors (including during training) and electronic monitoring staff who provide electronic monitoring services to vessels; vessel owner; and service provider. NMFS will determine the adequate level of insurance and notify potential service providers;

(H) Proof of benefits and personnel services provided in accordance with the terms of each monitor's or electronic monitoring staff's contract or employment status;

(I) Proof that the service provider's at-sea monitors or video reviewers have passed an adequate training course sponsored by the service providers to the extent not funded by NMFS that is consistent with the curriculum used in the current yearly NEFOP training course, unless otherwise specified by NMFS;

(J) An Emergency Action Plan describing the provider's response to an emergency with any at-sea monitor or electronic monitoring staff, including, but not limited to, personal injury, death, harassment, or intimidation; and

* * * * *

(ii) *Service provider performance requirements.* At-sea and electronic monitoring service providers must be able to document compliance with the following criteria and requirements:

(A) * * *

(*6*) For service providers offering catch estimation or at-sea or electronic monitoring services, a service provider must be able to determine an estimate of discards for each trip and provide such information to the sector manager and NMFS, as required by this section.

(B) The service provider must ensure that at-sea monitors or video reviewers remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload or electronic monitoring trip report submission. Electronic monitoring service providers must ensure that electronic monitoring data and reports are retained for a minimum of 12 months after catch data is finalized for the fishing year. NMFS will notify providers of the catch data finalization date each year. The service provider must provide NMFS access to electronic monitoring data upon request;

(C) The service provider must report possible at-sea or electronic monitoring staff harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding at-sea or electronic monitoring staff conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS;

(D) The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (*i.e.,* sectors and participating vessels) and between the service provider and specific dockside, roving, at-sea, or electronic monitoring staff;

* * * * *

(G) With the exception of a service provider offering reporting, dockside, at-sea, or electronic monitoring services to participants of another fishery managed under Federal regulations, a service provider's owner(s), board member(s), and officers must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of service providers;

(H) * * *

(*1*) At-sea monitor and other approved monitoring equipment deployment or video review levels, including the number of refusals and reasons for such refusals;

* * * * *

(*4*) Electronic monitoring data and reports.

* * * * *

(iv) *Standards for individual electronic monitoring video reviewers.* For an individual to be approved/certified as an electronic monitoring video reviewer, the service provider must demonstrate that each potential reviewer meets the requirements described in paragraphs (b)(4)(iii)(A), (B), (E), and (F) of this section.

* * * * *

(5) * * *

(iii) * * *

(A) *Vessel requirements*—(*1*) *Pre-trip notification.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(*1*) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, whether a monkfish DAS will be used, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (*e.g.,* phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of a sector's yearly operations plan. If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has been assigned to a particular trip pursuant to paragraph (b)(5)(iii)(B)(*1*) of this section, the vessel may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

(*2*) *Electronic monitoring system requirements.* A vessel operator using electronic monitoring to meet sector monitoring requirements must ensure that the electronic monitoring system is operational for every trip, including:

(*i*) Ensuring that the electronic monitoring system is operating, recording, and retaining the recording for the duration of every trip. A vessel must not fish without an operational electronic monitoring system recording and retaining the recording of activity onboard, unless issued a waiver by NMFS;

(*ii*) Conducting a system check of the electronic monitoring system prior to departing on a fishing trip to ensure it is fully operational, including ensuring there is sufficient video storage capacity to retain the recording of the entire fishing trip;

(*iii*) Ensuring camera views are unobstructed and clear, including ensuring lighting is sufficient in all circumstances to illuminate catch, so that catch and discards are visible and may be identified and quantified as required; and

(*iv*) Ensuring that no person tampers with, disconnects, or destroys any part of the electronic monitoring system, associated equipment, or recorded data.

(*3)Vessel monitoring plan requirements for electronic monitoring vessels.* A vessel must have a NMFS-approved vessel monitoring plan to meet sector monitoring requirements.

(*i*) The vessel monitoring plan must be onboard the vessel at all times.

(*ii*) The vessel operator and crew must comply with all catch handling protocols and other requirements described in the vessel monitoring plan, including sorting catch and processing any discards within view of the cameras and consistent with the vessel monitoring plan.

(*iii*) Modifications to any vessel monitoring plan must be approved by NMFS prior to such vessel fishing under the conditions of the new vessel monitoring plan.

(*iv)* A vessel owner or operator using electronic monitoring to meet sector monitoring requirements must submit all electronic monitoring data to the service provider in accordance with the electronic monitoring program requirements specified by NMFS.

(*v*) A vessel owner or operator must make the electronic monitoring system, associated equipment, electronic monitoring data, or vessel monitoring plan available to NMFS for inspection, upon request.

* * * * *

(B) * * *

(*2*) *At-sea/electronic monitoring report.* A report detailing area fished and the amount of each species kept and discarded shall be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 48 hour of the completion of the trip, or as otherwise instructed by the Regional Administrator. The data elements to be collected and the format for submission shall be specified by NMFS and distributed to all approved at-sea/electronic monitoring service providers and sectors. At-sea/electronic monitoring data shall not be accepted until such data pass automated NMFS data quality checks.

(iv) * * *

(B) *At-sea monitoring service provider requirements.* An at-sea monitor must complete a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (b)(5)(iv)(B), an at-sea monitor cannot be deployed on that vessel for that trip.

* * * * *

[FR Doc. 2021–08998 Filed 4–29–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 82
Friday, April 30, 2021

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

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2020–0694]

RIN 1625–AA09

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Madeira Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the Welch Causeway (SR 699) Bridge, mile 122.8 at Madeira Beach, Florida. A request was made by the City of Madeira Beach, FL to place the drawbridge on a daily operating schedule to alleviate vehicle congestion due to on demand bridge openings. This change may be necessary to balance the needs of all modes of transportion due to the economic growth in the vicinity of the bridge. The Coast Guard is seeking comments from the public regarding these proposed changes.

DATES: Comments and related material must reach the Coast Guard on or before May 15, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0694 using Federal e-Rulemaking Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email LT Clark W. Sanford, U.S. Coast Guard, Sector Saint Petersburg Waterways Management Division; telephone 727–824–7506, email *Clark.W.Sanford@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose and Legal Basis

On December 18, 2020 the Coast Guard published a Test Deviation entitled Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Madeira Beach, FL in the **Federal Register** (85 FR 82355). The TD invited comments on the proposed rule change. One comment was received which was irrelevant to the test deviation.

The Welch Causeway (SR 699) Bridge across the Gulf Intracoastal Waterway, mile 122.8, at Madeira Beach, Florida is a double-leaf bascule bridge with a 25 foot vertical clearance at mean high water in the closed position and a 89 foot horizontal clearance between fenders. The normal operating schedule for the bridge is found in 33 CFR 117.287(h). Navigation on the waterway is commercial and recreational.

The City of Madeira Beach Florida has requested the current operating schedule be modified due to the increased economic growth and vehicle traffic in the area, as well as a school located in close proximity to the bridge. The bridge owner, Florida Department of Transportation (FDOT), is in support of the proposed changes.

III. Discussion of Proposed Rule

Under this proposed regulation, the draw of the Welch Causeway Bridge shall open on signal except that, from 7 a.m. to 7 p.m. daily, except Federal holidays, the draw need only open on the hour and half hour.

This proposed change would still allow vessels that can transit under the bridge, without an opening, to do so at any time while taking into account the reasonable needs of other modes of transportation. Vessels in distress, public vessels of the United States, and tugs with tows must be passed at any time.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability that vessels can still transit the bridge twice an hour during the designated time-frames and vessels that do not need an opening may pass at any time.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. 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 bridge 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 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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

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

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 0170.1.

■ 2. Amend § 117.287 by revising paragraph (h) to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(h) The draw of the Welch Causeway (SR 699) Bridge, mile 122.8, at Madeira Beach, Florida, shall open on signal; except that, from 7 a.m. to 7 p.m. daily, except Federal holidays, the draw need only open on the hour and half hour.

Dated: April 16, 2021.

Eric C. Jones,

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

[FR Doc. 2021–08984 Filed 4–29–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0138]

RIN 1625–AA00

Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations for recurring marine events and fireworks displays that take place within the Fifth Coast Guard District area of responsibility. We invite your comments on this rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 1, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0138 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Captain Maureen Kallgren, Fifth Coast Guard District Office of Waterways Management, U.S. Coast Guard; telephone (757) 398–6250, email *Maureen.R.Kallgren@uscg.mil* or Mr. Jerry Barnes, Fifth Coast Guard District Office of Waterways Management, U.S. Coast Guard; telephone (757) 398–6230, email *Jerry.R.Barnes@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Coast Guard regularly updates the regulations for recurring safety zones within the Fifth Coast Guard District at 33 CFR 165.506, and its respective tables. These recurring safety zones are for fireworks displays that take place either on or over the navigable waters of the Fifth Coast Guard District as defined at 33 CFR 3.25. These regulations were last amended June 13, 2017 (81 FR 81005). The Fifth Coast Guard District is proposing to revise these regulations to update existing events, add new events, and remove events that no longer require additional safety measures. Based on the nature of fireworks and the large number of people attending, the Coast Guard has determined that the events listed in this rule could pose a risk to the public. We are also proposing to revise the text for better clarity and easier readability.

The purpose of this rulemaking is to ensure the safety of persons, vessels, and the navigable waters within close proximity to fireworks displays before, during, and after the scheduled events. Each year, organizations, individuals and government agencies in the Fifth Coast Guard District sponsor fireworks displays in the same general location and time period. Each event uses a floating platform (*e.g.* barge) or an on-shore site near the shoreline to launch the fireworks. A safety zone is used to limit access to an area within a specified distance surrounding the fireworks launch site to ensure the safety of persons and property. Coast Guard personnel on scene may allow boaters within the safety zone if conditions permit.

The Coast Guard is conducting this rulemaking under authority in 46 U.S.C. 70034 (previously, 33 U.S.C. 1231). The Secretary has delegated ports and waterways authority, with certain reservations not applicable here, to the Commandant via DHS Delegation No. 0170.1(II) (70). The Commandant has further delegated these authorities within the Coast Guard as described in 33 CFR 1.05–1 and 6.04–6.

III. Discussion of Proposed Rule

A. Administrative Changes

We are proposing several administrative updates, substantive and non-substantive, to the regulatory text. We have reorganized and revised the text to, consolidate related information, improve readability, and reflect revised local policies.

First, the text has been re-organized to reflect the order in which information is needed by the reader—defined terms, applicability of the regulation, when the regulation will be enforced and notification to the public, requirements in place when the regulation is being enforced, warning sign information, postponement or cancellation of an event, COTP contact information, and finally the tables of events.

As noted above we are proposing to add a definition section up front so that terms utilized later in the regulation are explained to the reader up front. One of the defined terms is ''Event Patrol Commander'', or ''Event PATCOM''. The Event PATCOM replaces the current regulation's reference to the ''Coast Guard Patrol Commander''; there is no change to the associated definition. Use of an Event PATCOM enables the local Captain of the Port to retain operational control and incorporate risk-based decision making to the event. We are also proposing to amend the regulation to allow for other government agencies to provide safety zone enforcement when working under local agreements which expands the ability to ensure safety of the public by increasing the number of available safety zone enforcement personnel.

We are proposing to consolidate information regarding when the regulation will be enforced and how the Coast Guard will notify the public of enforcement into a new paragraph (c) and placing it near the beginning of the regulation. This information is currently scattered through several paragraphs of the text (paragraphs (a)(2), (b)(2), and (d)). Consolidating this information makes it easier to locate all of the necessary information and how the different requirements relate to each other.

In the paragraph regarding warning-sign requirements the term ''fireworks launch site'' has been updated to ''floating platform''. This revision makes clear that the regulation applies to all floating platforms used to launch fireworks and not just barges.

We have updated the location for Sector Virginia from Norfolk to Portsmouth, VA, where the command center is now located. We have also updated the phone number for Sector North Carolina. Email addresses have been added to the text to aid the public in communicating with the appropriate Sector.

Finally, this rule gives discretionary authority to COTPs and Event PATCOMs to postpone or cancel the fireworks display at any time for the purpose of ensuring the safety of the public.

The tables accompanying this rule have been updated for clarity and to assist the reader.

B. Changes to Table to 33 CFR 165.506

This rule would add 14 new safety zones, revise 29 previously established safety zones, and remove 24 safety zones. Currently there is one table of

events for all of 33 CFR 165.506. We are proposing to break that table into separate tables for each COTP zone. This change will make it easier for the Coast Guard to make changes to the tables in the future and will hopefully make the tables easier for the public to read as well. We are also proposing to re-format the date entries so that the information is more clearly stated.

New Safety Zones

This rule proposes to add 14 new safety zones. The location and enforcement period for each of the new zones are listed in the below table.

TABLE 1—NEW SAFETY ZONES TO BE ADDED TO 33 CFR 165.506

USCG sector	Location	Regulated area	Enforcement period(s) *
Coast Guard Sector Delaware Bay—COTP Zone.	Delaware Bay, Lewes, DE.	All waters of Delaware Bay off Lewes, DE, within 350 yards of the barge anchored in approximate position 38°47′12″ N, 075°07′48″ W.	One period, four days.
	Great Egg Harbor Bay, Ocean City, NJ.	The waters of the Great Egg Harbor Bay within a 300-yard radius of the fireworks barge in approximate position latitude 39°17′24″ N, longitude 074°34′31″ W, adjacent to shoreline of Ocean City, NJ.	One period, one day.
Coast Guard Sector Maryland-National Capital Region—COTP Zone.	Washington Channel, Upper Potomac, Washington, DC.	All navigable waters of the Washington Channel within 200 feet of the fireworks barge which will be located within an area bounded on the south by latitude 38°52′30″ N, and bounded on the north by the southern extent of the Francis Case (I–395) Memorial Bridge, located at Washington, DC.	Multiple periods March through December each year.
	Anacostia River, Washington, DC.	All navigable waters of the Anacostia River within 400 feet of the fireworks barge in approximate position latitude 38°52′16.3″ N, longitude 077°00′09.7″ W, located at Washington, DC.	One period, one day.
	Middle River, Baltimore County, MD.	All navigable waters of the Middle River within 200 yards of the fireworks barge in approximate position latitude 39°18′25″ N, longitude 076°24′27″ W, located in Baltimore County, MD.	One period, one day.
	Susquehanna River, Havre de Grace, MD.	All navigable waters of the Susquehanna River within 200 yards of the fireworks barge in approximate position latitude 39°32′19″ N, longitude 076°04′58.3″ W, located at Havre de Grace, MD.	One period, one day.
	Spa Creek, Annapolis, MD.	All navigable waters of Spa Creek within 400 feet of the fireworks barge in approximate position latitude 38°58′32.48″ N, longitude 076°28′57.55″ W, located at Annapolis, MD.	One period, one day.
	Severn River, Sherwood Forest, MD.	All navigable waters of the Severn River within 150 yards of the fireworks discharge site located at the end of Sherwood Forest Club main pier in approximate position latitude 39°01′54.0″ N, longitude 076°32′41.8″ W, located at Sherwood Forest, MD.	One period, one day.
	Patapsco River, Middle Branch, Baltimore, MD.	All navigable waters of the Middle Branch of the Patapsco River, within 800 feet of a fireworks barge in the in approximate position latitude 39°15′31.67″ N, longitude 076°37′13.95″ W, located at Baltimore, MD.	One period, one day.
Coast Guard Sector Virginia—COTP Zone.	Elizabeth River, Town Point Reach, Norfolk, VA.	All waters of Elizabeth River within a 600-foot radius of the fireworks display at approximate position latitude 36 degrees 50′40.99″ N, longitude 076 degrees 17′45.48″ W near Town Point Park, VA.	One period, one day.
	North Atlantic Ocean, Virginia Beach, VA.	All waters of the North Atlantic Ocean within a 300-yard radius of the center located at approximate position latitude 36°50′29.91″ N, longitude 075°58′05.36″ W, located off the beach between 10th and 15th streets.	One period, three days.
Coast Guard Sector North Carolina—COTP Zone.	Bath Creek, Bath, NC	All waters on Bath Creek within a 300-yard radius of approximate position 35°28′05″ N, 076°48′56″ W, Bath, NC.	One period, two days.
	Atlantic Intracoastal Waterway, Surf City, NC.	All waters of the Atlantic Intracoastal Waterway within a 300-yard radius of approximate position latitude 34°25′46″ N, longitude 077°33′01″ W, in Surf City, NC.	One period, one day.
	Neuse River, New Bern, NC.	All waters within a 300-yard radius of the fireworks launch location at approximate position latitude 35°06′23″ N, longitude 077°01′48″ W, on the Neuse River, New Bern, NC.	One period, one day.

Revised Safety Zones

We are proposing to revise 29 previously established safety zones. The chart below includes a description of each change and an explanation why the change is necessary.

TABLE 2—CHANGES TO EXISTING EVENTS IN 33 CFR 165.506

Current table to § 165.506 entry	Location	Revision (date and/or coordinates)	Reason for change
(a.) 5	Barnegat Bay, Barnegat Township, NJ.	dates	Event no longer occurs in September.

TABLE 2—CHANGES TO EXISTING EVENTS IN 33 CFR 165.506—Continued

Current table to § 165.506 entry	Location	Revision (date and/or coordinates)	Reason for change
(a.) 9	Metedeconk River, Brick Township, NJ.	dates	Event now takes place in June or July instead of July and September.
(a.) 14	Delaware, River, Chester, PA	dates	Event date updated.
(a.) 15	Delaware River, Essington, PA	dates and coordinates	The location of the safety zone was moved to reflect the updated location of the fireworks barge. Event now occurs in June or July instead of September.
(a.) 18	Rehoboth Bay, DE	dates	The spring occurrence of the event has changed from April to May.
(b.) 2	Severn River and Spa Creek, Annapolis, MD.	dates and coordinates	Safety zone size decreased from a 300-yard radius to a 200-yard radius without negative impact to public safety. December occurrence no longer occurs.
(b.) 3	Upper Potomac River, Washington, DC.	coordinates	Safety zone size decreased from a 300-yard radius to a 200-yard radius without negative impact to public safety.
(b.) 4	Northwest Harbor, Patapsco River, MD.	dates and coordinates	Safety zone size decreased from a 300-yard radius to a 200-yard radius without negative impact to public safety. July and December occurrences removed; added alternative date to September.
(b.) 5	Baltimore Inner Harbor, MD	dates	April, July , and December occurrences no longer occur; added new occurrence in November.
(b.) 8	Patuxent River, Calvert County, MD.	dates and coordinates	The location of the safety zone was moved to reflect the updated location of the fireworks barge closer to shore. Alternative date added.
(b.) 9	Chesapeake Bay, Chesapeake Beach, MD.	dates and coordinates	The location of the safety zone was moved to reflect the updated location of the fireworks barge. Alternative dates added.
(b.) 10	Choptank River, Cambridge, MD	coordinates	The location of the safety zone was moved to reflect the updated location of the fireworks site to an onshore location.
(b.) 14	Miles River, St. Michaels, MD	coordinates	The location of the safety zone was moved to reflect the updated location offshore.
(b.) 15	Tred Avon River, Oxford, MD	dates and coordinates	The location of the safety zone was moved to reflect the updated location of the fireworks site. Alternative dates added.
(b.) 16	Northeast River, North East, MD	dates and coordinates	Safety zone size decreased from a 300-yard radius to a 150-yard radius without negative impact to public safety. Alternative August date added.
(b.) 18	Anacostia River, Washington, DC.	coordinates	Safety zone size decreased from a 150-yard radius to 500 feet without negative impact to public safety.
(b.) 19	Potomac River, Prince William County, VA.	coordinates	Safety zone size decreased from a 200-yard radius to 150 yards without negative impact to public safety.
(b.) 21	Isle of Wight Bay, Ocean City, MD.	dates and coordinates	Safety zone size decreased from a 200 yard radius to 150 yards without negative impact to public safety. Event changed from near Memorial Day to July 4th and near Labor Day.
(b.) 22	Assawoman Bay, Fenwick Island, MD.	dates and coordinates	Safety zone size decreased from a 360-yard radius to 200 yards without negative impact to public safety.
(b.) 23	Baltimore Harbor, MD	coordinates	Safety zone size decreased from a 280-yard radius to 800 feet without negative impact to public safety. April Occurrence removed.
(b.) 24	Chester River, Kent Island Narrows, MD.	dates and coordinates	Safety zone moved to a more open shoreside location and reduced from a 300 yard radius to 800 feet radius without negative impact to public safety. Alternative date added.
(c.) 6	Chesapeake Bay, Virginia Beach, VA.	Dates	Alternative date added for planning flexibility.
(d.) 2	Cape Fear River, Wilmington, NC.	dates	Alternative date added to the April occurrence.
(d.) 3	Green Creek and Smith Creek, Oriental, NC.	coordinates	Language ''approximate'' added to be clearer and consistent with other entries.
(d.) 4	Pasquotank River, Elizabeth City, NC.	dates and coordinates	Language ''located approximately 400 yards north of Cottage Point, NC'' removed to be clearer and consistent with other entries. May occurrences added.
(d.) 7	Pamilico River, Washington, NC	coordinates	Language ''the fireworks launch site at approximate position'' added to be clearer and consistent with other entries.
(d.) 8	Neuse River, New Bern, NC	coordinates	Language ''located 420 yards north of the New Bern Twin Span, high rise bridge'' removed to be clearer and consistent with other entries.
(d.) 13	Atlantic Intracoastal Waterway, Swansboro, NC.	coordinates	Language ''the fireworks launch position at'' and ''near Swansboro'' added and ''on Pelican Island'' removed to be clearer and consistent with other entries.

TABLE 2—CHANGES TO EXISTING EVENTS IN 33 CFR 165.506—Continued

Current table to § 165.506 entry	Location	Revision (date and/or coordinates)	Reason for change
(d.) 14	Shallowbag Bay, Manteo, NC	coordinates	The safety zone was increased from a 200-yard radius to a 300-yard radius to account for larger fireworks display.

Safety Zones To Be Removed

This rule proposes to remove 24 safety zones listed in the table to § 165.506. The Coast Guard evaluated each of the 24 safety zones and determined that either the event is no longer held at that location or can be adequately enforced using the navigation safety rules with no negative impact to public safety.

TABLE 3—SAFETY ZONES PROPOSED TO BE REMOVED FROM THE TABLE TO 33 CFR 165.506

Current table to § 165.506 entry	Date(s)	Location	Reason for removal
(a.) 1	July 2nd, 3rd, 4th, or 5th	North Atlantic Ocean, Bethany Beach, DE.	Removing safety zone and deferring to navigation safety regulations does not negatively impact public safety.
(a.)(2)	Labor Day	Indian River Bay, DE	Removing safety zone and deferring to navigation safety regulations does not negatively impact public safety.
(a.)(3)	July 2	North Atlantic Ocean, Rehoboth Beach, DE.	Removing safety zone and deferring to navigation safety regulations does not negatively impact public safety.
(a.)(8)	July 2nd, 3rd, 4th, or 5th August—3rd Sunday.	Great Egg Harbor Inlet, Margate City, NJ.	Removing safety zone and deferring to navigation safety regulations does not negatively impact public safety.
(a.)10	July 2nd, 3rd, 4th, or 5th	North Atlantic Ocean, Atlantic City, NJ.	Removing safety zone and deferring to navigation safety regulations does not negatively impact public safety.
(a.)11	July 2nd, 3rd, 4th or 5th October—1st or 2nd Saturday.	North Atlantic Ocean, Ocean City, NJ.	Removing safety zone and deferring to navigation safety regulations does not negatively impact public safety.
(a.)17	July 2nd, 3rd, 4th, or 5th	North Atlantic Ocean, Sea Isle, NJ..	Removing safety zone and deferring to navigation safety regulations does not negatively impact public safety.
(b.)1	April—1st, 2nd, or 3rd Saturday.	Washington Channel, Potomac River, Washington, DC.	Event no longer held at this location.
(b.)7	July 4th; December 31st	Northwest Harbor Patapsco River, MD.	Event no longer held at this location.
(b.)11	July—2nd or 3rd or last Saturday.	Potomac River, Fairview Beach, Charles County, MD.	Event no longer held at this location.
(b).12	July—day before Independence Day holiday and July 4th; November—3rd Thursday, 3rd Saturday and last Friday; December—1st, 2nd and 3rd Friday.	Potomac River, National Harbor, MD.	Event no longer held at this location.
(c.)2	September—last Friday or October—1st Friday.	York Rivers, West Point, VA ..	Event no longer held at this location.
(c.)4	July 4th, July 5th, July 6th, or July 7th.	James River, Newport News, VA.	Event no longer held at this location.
(c.)7	July 4th; December 31st, January 1st.	Elizabeth River Southern Branch, Norfolk, VA.	Removing safety zone and deferring to navigation safety regulations does not negatively impact public safety.
(c.)8	July—3rd Saturday	John H. Kerr Reservoir, Clarksville, VA.	Removing safety zone and deferring to navigation safety regulations does not negatively impact public safety.
(c.)10	September—last Saturday or October—1st Saturday.	North Atlantic Ocean Safety Zone B, Virginia Beach, VA.	Removing safety zone and deferring to navigation safety regulations does not negatively impact public safety.
(c.)11	Friday, Saturday and Sunday Labor Day Weekend.	North Atlantic Ocean Safety Zone C, Virginia Beach, VA.	Event no longer held at this location.
(c.)14	July—3rd, 4th, and 5th	Great Wicomico River, Mila, VA.	Event no longer held at this location.
(c.)15	July—1st Friday, Saturday and Sunday.	Cockrell's Creek, Reedville, VA.	Event no longer held at this location.
(c.)16	May—last Sunday	James River, Richmond, VA ..	Event no longer held at this location.
(c.)17	June—last Saturday	Rappahannock River, Tappahannock, VA.	Event no longer held at this location.
(c.)19	July 3rd or 4th	Pagan River, Smithfield, VA ..	Event no longer held at this location.
(c.)20	July 4th	Sandbridge Shores, Virginia Beach, VA.	Event no longer held at this location.
(c.)22	July 3rd, 4th, or 5th	Urbanna Creek, Urbanna, VA	Event no longer held at this location.

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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the short amount of time that vessels will be restricted from certain parts of the waterway and the small size of these areas that are usually positioned away from high vessel traffic zones. Generally vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the regulated areas. Advance notifications would also be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, Marine Safety Information or Security Bulletins so mariners can adjust their plans accordingly. Notifications to the public for most events will typically be made by local newspapers, radio and TV stations. The Coast Guard anticipates that these special local regulated areas and safety zones will only be enforced one to three times per year.

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 through a special local regulated area or 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. These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The Coast Guard will ensure that small entities are able to operate in the areas where events are occurring to the extent possible while ensuring the safety of the public. The enforcement period will be short in duration and, in many of the areas, vessels can transit safely around the safety zone. Generally permission to enter, remain in, or transit through these regulated areas during the enforcement may be given when deemed safe to do so by the Event PATCOM on scene.

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

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 contact 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 effects of this 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 implementation of regulations at 33 CFR part 165 that establish safety zones on navigable waters of the United States for fireworks events. These safety zones are enforced for the duration of fireworks display events. The fireworks are generally launched from either a floating platform or shore side location immediately adjacent to navigable waters of the United States. The category of activities includes fireworks launched from floating platforms or at the shoreline that generally rely on the use of navigable waters as a safety buffer. Fireworks displays may introduce potential hazards such as accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This section of the rule is categorically excluded from further review under paragraph L[60] 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.

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 contact 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.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.506 to read as follows:

§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.

(a) *Definitions.* The following definitions apply to this section:

Event Patrol Commander or Event *PATCOM* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector—COTP to enforce these regulations.

Official patrol means any vessel assigned or approved by the respective Captain of the Port (COTP) with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign, or any state or local law enforcement vessel approved by the COTP in accordance with current local agreements.

(b) *Applicability.* This section applies to the safety zones listed in paragraph (h) of this section.

(c) *Enforcement periods and COTP notification to the public.* The COTP for the area where an event will be held will annually notify the public of each enforcement of a safety zone in paragraph (h) of this section by all appropriate means to affect the widest publicity among the affected public, including by Local Notices to Mariners and by Broadcast Notice to Mariners over VHF–FM marine band radio. The announcement will contain the details of the fireworks display, including the date(s) and time(s) of the enforcement period of the regulation with respect to that safety zone and the affected geographical area. Broadcasts may be made for these events beginning 24 to 48 hours before the event is scheduled to begin. The enforcement period(s) for each safety zone in paragraph (h) of this section is subject to change, but the duration of enforcement will remain the same, or nearly the same, total amount of time as stated in its table. An event may be conducted on the day following the date listed in paragraph (h) of this section in the case of inclement weather. Unless the COTP notifies the public otherwise, the safety zones in paragraph (h) of this section will be enforced from 5:30 p.m. on the date listed in paragraph (h) to 1 a.m. the date following the last date listed in paragraph (h) for an event.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) Vessels may not enter, remain in, or transit through the safety zones during enforcement unless authorized to do so by the COTP or the Event PATCOM.

(3) The Coast Guard may assign an official patrol to each fireworks display listed in paragraph (h) of this section. For each fireworks display assigned a patrol, a Coast Guard Event Patrol Commander (Event PATCOM) will be assigned to oversee the patrol. All persons and vessels must comply with the instructions of the Coast Guard COTP, Event PATCOM, or the official patrol. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel must proceed as directed.

(e) *Warning signs.* (1) The pyrotechnic operator, or the agent of a professional pyrotechnics company, contracted by an event sponsor to conduct the fireworks display must ensure that a warning sign is affixed to the port and starboard side of the floating platform and visible each day the safety zone will be enforced. For a shore-based launch site, the pyrotechnic operator must ensure a warning sign is visible 3 feet above the ground level, on a post immediately adjacent to the shoreline, facing the water each day the safety zone will be enforced.

(2) The warning sign in paragraph (e)(1) of this section will be labeled ''FIREWORKS—DANGER—STAY AWAY''. The sign must be: Diamond shaped, sized 4 feet by 4 feet, have a white background, and have a 3-inch orange retro-reflective border. The word ''DANGER'' must be in 10-inch black block letters centered on the sign. The words ''FIREWORKS'' and ''STAY AWAY'' must be in 6-inch black block letters placed above and below the word ''DANGER''.

(f) *Postponement or cancellation.* The COTP or Event PATCOM may order the postponement or cancellation of a fireworks display at any time if, in their sole discretion, it is determined that the display cannot be conducted in a safe manner.

(g) *Contact information.* The public should contact the Coast Guard COTP for the area in which the event is occurring if they have questions about these safety zones. Contact information is listed below. For a description of the geographical area of each Coast Guard

Sector—Captain of the Port zone, please see 33 CFR 3.25.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4940, email: *D05-smb-secdelbay-WWM@uscg.mil.*

(2) Coast Guard Sector Maryland-National Capital Region—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525, email: *D05-DG-SectorMD-NCR-MarineEvents@uscg.mil.*

(3) Coast Guard Sector Virginia—Captain of the Port Zone, Portsmouth, Virginia: (757) 483–8567; email: *D05-DG-SECTORVA-WTRWAY@uscg.mil.*

(4) Coast Guard Sector North Carolina—Captain of the Port Zone, Wilmington, North Carolina: (910) 343–3882, email: *ncmarineevents@uscg.mil.*

(h) *Tables to § 165.506.* All coordinates listed reference Datum NAD 1983. As noted in paragraph (c) of this section, the enforcement period for each of the listed safety zones is subject to change.

(1) Coast Guard Sector Delaware Bay—COTP Zone.

TABLE 1 TO PARAGRAPH (h)(1)

No.	Enforcement period(s)	Location	Safety zone—regulated area
1	July 2nd, 3rd, 4th or 5th	North Atlantic Ocean, Avalon, NJ; Safety Zone.	The waters of the North Atlantic Ocean within a 500-yard radius of the fireworks barge in approximate location latitude 39°06′19.5″ N, longitude 074°42′02.15″ W, in the vicinity of the shoreline at Avalon, NJ.
2	One Saturday or Sunday in June or July.	Barnegat Bay, Barnegat Township, NJ; Safety Zone.	The waters of Barnegat Bay within a 500-yard radius of the fireworks barge in approximate position latitude 39°44′50″ N, longitude 074°11′21″ W, approximately 500 yards north of Conklin Island, NJ.
3	July 2nd, 3rd, 4th or 5th	North Atlantic Ocean, Cape May, NJ; Safety Zone.	The waters of the North Atlantic Ocean within a 500-yard radius of the fireworks barge in approximate location latitude 38°55′36″ N, longitude 074°55′26″ W, immediately adjacent to the shoreline at Cape May, NJ.
4	July 2nd, 3rd, 4th or 5th	Delaware Bay, North Cape May, NJ; Safety Zone.	All waters of the Delaware Bay within a 360-yard radius of the fireworks barge in approximate position latitude 38°58′00″ N, longitude 074°58′30″ W.
5	Each Thursday in July	Metedeconk River, Brick Township, NJ; Safety Zone.	The waters of the Metedeconk River within a 300-yard radius of the fireworks launch platform in approximate position latitude 40°03′24″ N, longitude 074°06′42″ W, near the shoreline at Brick Township, NJ.
6	4th Saturday in May	Barnegat Bay, Ocean Township, NJ; Safety Zone.	All waters of Barnegat Bay within a 500-yard radius of the fireworks barge in approximate position latitude 39°47′33″ N, longitude 074°10′46″ W.
7	July 2nd, 3rd, 4th, or 5th	Little Egg Harbor, Parker Island, NJ; Safety Zone.	All waters of Little Egg Harbor within a 500-yard radius of the fireworks barge in approximate position latitude 39°34′18″ N, longitude 074°14′43″ W, approximately 50 yards north of Parkers Island.
8	Any day(s) from January 1st through December 31st specified by Notice of Enforcement published in the **Federal Register** and broadcast via Broadcast Notice to Mariners.	Delaware River, Chester, PA; Safety Zone.	All waters of the Delaware River near Chester, PA, just south of the Commodore Barry Bridge within a 500-yard radius of the fireworks barge located in approximate position latitude 39°49′43.2″ N, longitude 075°22′42″ W.
9	One Saturday or Sunday in either June or July.	Delaware River, Essington, PA; Safety Zone.	All waters of the Delaware River near Essington, PA, west of Little Tinicum Island within a 250-yard radius of the fireworks barge located in the approximate position latitude 39°51′27″ N, longitude 075°18′19″ W.
10	Any day from January 1st through December 31st specified by Notice of Enforcement published in the **Federal Register** and broadcast via Broadcast Notice to Mariners.	Delaware River, Philadelphia, PA; Safety Zone.	All waters of Delaware River, adjacent to Penn's Landing, Philadelphia, PA, within a 500-yard radius of a fireworks barge at approximate position latitude 39°56′49″ N, longitude 075°08′11″ W.
11	One Friday, Saturday or Sunday in May; and July 2nd, 3rd, 4th or 5th; and December 31st.	Rehoboth Bay, DE; Safety Zone.	All waters within a 500-yard radius of a fireworks barge located at position latitude 38°41′21″ N, longitude 075°05′00″ W at Rehoboth Bay near Dewey Beach, DE.
12	July 2nd, 3rd, 4th or 5th	Delaware Bay, Lewes, DE; Safety Zone.	All waters of Delaware Bay off Lewes, DE, within a 350 yard radius of the barge anchored in approximate position 38°47′12″ N, 075°07′48″ W.
13	One Saturday in July	Great Egg Harbor Bay, Ocean City, NJ; Safety Zone.	The waters of the Great Egg Harbor Bay within a 300-yard radius of the fireworks barge in approximate position latitude 39°17′24″ N, longitude 074°34′31″ W, adjacent to shoreline of Ocean City, NJ.

(2) Coast Guard Sector Maryland-National Capital Region—COTP Zone.

TABLE 1 TO PARAGRAPH (h)(2)

No.	Enforcement period(s)	Location	Safety zone—regulated area
1	Any day(s) from March 1st through December 31st. Whenever feasible, the COTP will publish a Notice of Enforcement at least 2 days in advance of the event in the **Federal Register**. Each day that the duration of each enforcement of the zone is expected to be 5 hours or less.	Washington Channel, Upper Potomac River, Washington, DC; Safety Zone.	The waters of the Washington Channel within a 200-foot radius of the fireworks floating platform which will be located within an area bounded on the south by latitude 38°52′30″ N, and bounded on the north by the southern extent of the Francis Case (I–395) Memorial Bridge, located at Washington, DC.

TABLE 1 TO PARAGRAPH (h)(2)—Continued

No.	Enforcement period(s)	Location	Safety zone—regulated area
2	July 4th	Severn River and Spa Creek, Annapolis, MD; Safety Zone.	The waters of the Severn River and Spa Creek within a 200-yard radius of the fireworks barge in approximate position latitude 38°58′38″ N, longitude 076°28′41″ W, located near the entrance to Spa Creek, at Annapolis, MD.
3	December 31st	Upper Potomac River, Washington, DC; Safety Zone.	The waters of the Upper Potomac River within a 200-yard radius of the fireworks barge in approximate position 38°48′14″ N, 077°02′10″ W, located near the waterfront (King Street) at Alexandria, VA.
4	June 14th, September—2nd or 3rd Saturday.	Northwest Harbor (East Channel), Patapsco River, MD; Safety Zone.	The waters of the Patapsco River within a 200-yard radius of the fireworks barge in approximate position latitude 39°15′55.15″ N, longitude 076°34′32.66″ W, located adjacent to the East Channel of Northwest Harbor, at Baltimore, MD.
5	May—2nd or 3rd Thursday, November—2nd Saturday or Sunday.	Baltimore Inner Harbor, Patapsco River, MD; Safety Zone.	The waters of the Patapsco River within a 100-yard radius of the fireworks barge in approximate position latitude 39°17′01″ N, longitude 076°36′31″ W, located at the entrance to Baltimore Inner Harbor, approximately 125 yards southwest of pier 3, at Baltimore, MD.
6	May—2nd or 3rd Thursday or Friday, July 4th, December 31st.	Baltimore Inner Harbor, Patapsco River, MD, Safety Zone.	The waters of the Patapsco River within a 100-yard radius of approximate position latitude 39°17′04″ N, longitude 076°36′36″ W, located in Baltimore Inner Harbor, approximately 125 yards southeast of pier 1, at Baltimore, MD.
7	April—1st, 2nd or 3rd Saturday or Sunday.	Anacostia River, Washington, DC; Safety Zone.	All navigable waters of the Anacostia River within a 400-foot radius of the fireworks barge in approximate position latitude 38°52′16.3″ N, longitude 077°00′09.7″ W, located at Washington, DC.
8	July 4th or the Friday or Saturday before or after Independence Day (observed).	Patuxent River, Calvert County, MD; Safety Zone.	The waters of the Patuxent River within a 200-yard radius of the fireworks barge located at latitude 38°19′17″ N, longitude 076°27′45″ W, approximately 700 feet from shore at Solomons Island, MD.
9	July 3rd, or the Friday after Independence Day (observed).	Chesapeake Bay, Chesapeake Beach, MD, Safety Zone.	The waters of the Chesapeake Bay within a 200-yard radius of the fireworks barge in approximate position latitude 38°41′36.36″ N, longitude 076°31′29.58″ W, and within a 200-yard radius of the fireworks barge in approximate position latitude 38°41′27.84″ N, longitude 076°31′28.50″ W, located near Chesapeake Beach, MD.
10	July 4th	Choptank River, Cambridge, MD; Safety Zone.	The waters of the Choptank River within a 300-yard radius of the fireworks launch site at Great Marsh Point, in approximate position latitude 38°35′05″ N, longitude 076°04′41″ W, located at Cambridge, MD.
11	July 4th, or Saturday or Sunday before or after Independence Day (observed).	Middle River, Baltimore County, MD; Safety Zone.	All waters of the Middle River within a 200-yard radius of the fireworks barge in approximate position latitude 39°18′25″ N, longitude 076°24′27″ W, located near Wilson Point in Baltimore County, MD.
12	July 4th, or the Saturday or Sunday before or after Independence Day (observed).	Susquehanna River, Havre de Grace, MD; Safety Zone.	All waters of the Susquehanna River within a 200-yard radius of the fireworks barge in approximate position latitude 39°32′19″ N, longitude 076°04′58.3″ W, located at Havre de Grace, MD.
13	July 4th or the Saturday or Sunday before or after Independence Day (observed).	Susquehanna River, Havre de Grace, MD; Safety Zone.	The waters of the Susquehanna River within a 300-yard radius of approximate position latitude 39°32′06″ N, longitude 076°05′22″ W, located on the island at Millard Tydings Memorial Park, at Havre de Grace, MD.
14	July 4th, or the Saturday before or after Independence Day (observed).	Miles River, St. Michaels, MD; Safety Zone.	All navigable waters of the Miles River within a 150-yard radius of the fireworks barge in approximate position latitude 38°47′55.10″ N, longitude 076°12′43.75″ W, located at the entrance to Long Haul Creek.
15	December 31st	Spa Creek, Annapolis, MD; Safety Zone.	The waters of Spa Creek within a 400-foot radius of the fireworks barge in approximate position latitude 38°58′32.48″ N, longitude 076°28′57.55″ W, located at Annapolis, MD.
16	July 3rd, or the Friday after Independence Day (observed).	Tred Avon River, Oxford, MD; Safety Zone.	The waters of the Tred Avon River within a 150-yard radius of the fireworks barge in approximate position latitude 38°41′38.84″ N, longitude 076°10′48.41″ W, approximately 330 yards northwest of the waterfront at Oxford, MD.
17	July 3rd or August 4th	Northeast River, North East, MD; Safety Zone.	All navigable waters of the Northeast River within a 300-yard radius of the fireworks barge in approximate position latitude 39°35′26.3″ N, longitude 075°57′04.9″ W, approximately 400 yards southwest of North East Community Park at North East, MD.
18	July—1st, 2nd or 3rd Saturday.	Upper Potomac River, Washington, DC; Safety Zone.	The waters of the Upper Potomac River within a 300-yard radius of the fireworks barge in approximate position 38°48′38″ N, 077°01′56″ W, located east of Oronoco Bay Park at Alexandria, VA.
19	March through October, at the conclusion of evening MLB games at Washington Nationals Ball Park.	Anacostia River, Washington, DC; Safety Zone.	The waters of the Anacostia River within a 500-foot radius of the fireworks barge in approximate position latitude 38°52′12.71″ N, longitude 077°00′14.08″ W, located near the Nationals Ball Park at Washington, DC.
20	June—last Saturday or July—1st Saturday; July—3rd, 4th or last Saturday, September—Saturday before Labor Day (observed).	Potomac River, Prince William County, VA; Safety Zone.	The waters of the Potomac River within a 150-yard radius of the fireworks barge in approximate position latitude 38°34′07.97″ N, longitude 077°15′37.39″ W, located near Cherry Hill, VA.
21	July 4th	North Atlantic Ocean, Ocean City, MD; Safety Zone.	The waters of the North Atlantic Ocean in an area bound by the following points: latitude 38°19′39.9″ N, longitude 075°05′03.2″ W; thence to latitude 38°19′36.7″ N, longitude 075°04′53.5″ W; thence to latitude 38°19′45.6″ N, longitude 075°04′49.3″ W; thence to latitude 38°19′49.1″ N, longitude 075°05′00.5″ W; thence to point of origin. The size of the safety zone extends approximately 300 yards offshore from the fireworks launch area located at the high water mark on the beach at Ocean City, MD.
22	May—Sunday before Memorial Day (observed), July 4th, August/September—Sunday before Labor Day (observed) or Labor Day (observed).	Isle of Wight Bay, Ocean City, MD; Safety Zone.	The waters of Isle of Wight Bay within a 150-yard radius of the fireworks barge in approximate position latitude 38°22′31″ N, longitude 075°04′30″ W, located at Ocean City, MD.
23	July 4th	Assawoman Bay, Fenwick Island—Ocean City, MD; Safety Zone.	The waters of Assawoman Bay within a 200-yard radius of the fireworks launch location on the pier at the west end of Northside Park, in approximate position latitude 38°25′54.72″ N, longitude 075°03′53.11″ W, located at Ocean City, MD.

TABLE 1 TO PARAGRAPH (h)(2)—Continued

No.	Enforcement period(s)	Location	Safety zone—regulated area
24	July 4th, December 31st	Baltimore Harbor, Baltimore Inner Harbor, MD; Safety Zone.	The waters of Baltimore Harbor, Patapsco River, within an 800-foot radius of the fireworks barge in approximate position latitude 39°16′36.7″ N, longitude 076°35′53.8″ W, located northwest of the Domino Sugar refinery wharf at Baltimore, MD.
25	July 4th, or the Tuesday, Wednesday or Thursday before Independence Day (observed).	Chester River, Kent Island Narrows, MD, Safety Zone.	All navigable waters of Chester River, Kent Island Narrows (North Approach), within 800 feet of the fireworks launch site at Kent Island in approximate position latitude 38°58′45.0″ N, longitude 076°14′52.8″ W, located in Queen Anne's County, MD.
26	July 3rd, or the Friday, Saturday or Sunday after Independence Day (observed).	Severn River, Sherwood Forest, MD; Safety Zone.	The waters of the Severn River within a 150-yard radius of the fireworks discharge site located at the end of Sherwood Forest Club main pier in approximate position latitude 39°01′54.0″ N, longitude 076°32′41.8″ W, located at Sherwood Forest, MD.
27	July 4th	Patapsco River-Middle Branch, Baltimore, MD; Safety Zone.	The waters of the Middle Branch of the Patapsco River, within an 800-feet radius of the fireworks display in the in approximate position latitude 39°15′31.67″ N, longitude 076°37′13.95″ W, located at Baltimore, MD.

(3) Coast Guard Sector Virginia—COTP Zone.

TABLE 1 TO PARAGRAPH (h)(3)

No.	Enforcement period(s)	Location	Safety zone—regulated area
1	July 4th	Linkhorn Bay, Virginia Beach, VA, Safety Zone.	All waters of the Linkhorn Bay within a 400-yard radius of the fireworks display in approximate position latitude 36°52′20″ N, longitude 076°00′38″ W, located near the Cavalier Golf and Yacht Club, Virginia Beach, VA.
2	July 4th	York River, Yorktown, VA, Safety Zone.	All waters of the York River within a 400-yard radius of the fireworks display in approximate position latitude 37°14′14″ N, longitude 076°30′02″ W, located near Yorktown, VA.
3	June—4th Friday, July—1st Friday, July 4th.	Chesapeake Bay, Norfolk, VA, Safety Zone.	All waters of the Chesapeake Bay within a 400-yard radius of the fireworks display located in position latitude 36°57′21″ N, longitude 076°15′00″ W, located near Ocean View Fishing Pier.
4	July 4th	North Atlantic Ocean, Virginia Beach, VA, Safety Zone A.	All waters of the North Atlantic Ocean within a 1,000-yard radius of the center located near the shoreline at approximate position latitude 36°51′12″ N, longitude 075°58′06″ W, located off the beach between 17th and 31st streets.
5	July 4th	Nansemond River, Suffolk, VA, Safety Zone.	All waters of the Nansemond River within a 350-yard radius of approximate position latitude 36°44′27″ N, longitude 076°34′42″ W, located near Constant's Wharf in Suffolk, VA.
6	July 4th	Chickahominy River, Williamsburg, VA, Safety Zone.	All waters of the Chickahominy River within a 400-yard radius of the fireworks display in approximate position latitude 37°14′50″ N, longitude 076°52′17″ W, near Barrets Point, VA.
7	July 4th, August—1st Friday, Saturday and Sunday, December 31st.	Cape Charles Harbor, Cape Charles, VA, Safety Zone.	All waters of Cape Charles Harbor located within a 125 yard-radius of the fireworks display at approximate position latitude 37°15′46.5″ N, longitude 076°01′30.3″ W. near Cape Charles, VA.
8	July 4th, 5th or 6th	Chesapeake Bay, Virginia Beach, VA, Safety Zone.	All waters of Chesapeake Bay located within a 200-yard radius of the fireworks display at approximate position latitude 36°54′58.18″ N, longitude 076°06′44.3″ W. near Virginia Beach, VA.
9	July 3rd, 4th or 5th	Chesapeake Bay, Virginia Beach, VA, Safety Zone.	All waters of the Chesapeake Bay 400 yard radius of the fireworks display in approximate position latitude 36°55′02″ N, longitude 076°03′27″ W, located at the First Landing State Park at Virginia Beach, Virginia.
10	July 4th	Elizabeth River Eastern Branch, Norfolk, VA; Safety Zone.	All waters of Eastern Branch Elizabeth River within the area along the shoreline immediately adjacent to Harbor Park Stadium ball park and outward into the river bound by a line drawn from latitude 36°50′30″ N, longitude 076°16′39.9″ W, thence south to 36°50′26.6″ N, longitude 076°16′39″ W, thence northwest to 36°50′28.8″ N, longitude 076°16′49.1″ W, thence north to 36°50′30.9″ N, longitude 076°16′48.6″ W, thence east along the shoreline to point of origin.
11	April: Last Friday, Saturday and Sunday.	North Atlantic Ocean, Virginia Beach, VA, Safety Zone.	All water of the North Atlantic Ocean within a 300-yard radius of approximate position latitude 36°50′29.91″ N, longitude 075°58′05.36″ W, located off the beach between 10th and 15th streets.

(4) Coast Guard Sector North Carolina—COTP Zone.

TABLE 1 TO PARAGRAPH (h)(4)

No.	Enforcement period(s)	Location	Safety zone—regulated area
1	July 4th, October—1st Saturday.	Morehead City Harbor Channel, NC, Safety Zone.	The waters of the Morehead City Harbor Channel that fall within a 360-yard radius of latitude 34°43′01″ N, longitude 076°42′59.6″ W, a position located at the west end of Sugar Loaf Island, NC.
2	April—1st or 2nd Saturday, July 4th, August—3rd Monday, October—1st Saturday.	Cape Fear River, Wilmington, NC, Safety Zone.	The waters of the Cape Fear River within an area bound by a line drawn from the following points: latitude 34°13′54″ N, longitude 077°57′06″ W; thence northeast to latitude 34°13′57″ N, longitude 077°57′05″ W; thence north to latitude 34°14′11″ N, longitude 077°57′07″ W; thence northwest to latitude 34°14′22″ N, longitude 077°57′19″ W; thence east to latitude 34°14′22″ N, longitude 077°57′06″ W, thence southeast to latitude 34°14′07″ N, longitude 077°57′00″ W; thence south to latitude 34°13′54″ N, longitude 077°56′58″ W; thence to the point of origin, located approximately 500 yards north of Cape Fear Memorial Bridge.

TABLE 1 TO PARAGRAPH (h)(4)—Continued

No.	Enforcement period(s)	Location	Safety zone—regulated area
3	July 1st Saturday, July 4th	Green Creek and Smith Creek, Oriental, NC, Safety Zone.	The waters of Green Creek and Smith Creek that fall within a 300-yard radius of the fireworks launch site at approximate latitude 35°01′29.6″ N, longitude 076°42′10.4″ W, located near the entrance to the Neuse River in the vicinity of Oriental, NC.
4	May—3rd or 4th Saturday: July 4th.	Pasquotank River, Elizabeth City, NC, Safety Zone.	The waters of the Pasquotank River within a 300-yard radius of the fireworks launch barge in approximate position latitude 36°17′47″ N, longitude 076°12′17″ W.
5	July 4th or 5th	Currituck Sound, Corolla, NC, Safety Zone.	The waters of the Currituck Sound within a 300-yard radius of the fireworks launch site in approximate position latitude 36°22′23.8″ N, longitude 075°49′56.3″ W, located near Whale Head Bay.
6	July 4th, November—3rd Saturday.	Middle Sound, Figure Eight Island, NC, Safety Zone.	The waters of the Figure Eight Island Causeway Channel from latitude 34°16′32″ N, longitude 077°45′32″ W, thence east along the marsh to latitude 34°16′19″ N, longitude 077°44′55″ W, thence south to the causeway at latitude 34°16′16″ N, longitude 077°44′58″ W, thence west along the shoreline to latitude 34°16′29″ N, longitude 077°45′34″ W, thence back to the point of origin.
7	June—2nd Saturday, July 4th.	Pamlico River, Washington, NC, Safety Zone.	The waters of Pamlico River and Tar River within a 300-yard radius of the fireworks launch site at approximate position latitude 35°32′25″ N, longitude 077°03′42″ W, a position located on the southwest shore of the Pamlico River, Washington, NC.
8	July 4th	Neuse River, New Bern, NC, Safety Zone.	The waters of the Neuse River within a 360-yard radius of the fireworks barge in approximate position latitude 35°06′07.1″ N, longitude 077°01′35.8″ W.
9	July—1st Saturday or Sunday, July 4th.	Pamlico Sound, Ocracoke, NC, Safety Zone.	The waters of Pamlico Sound with a 300-yard radius of the National Park Service boat launch site at Ocracoke, NC at position latitude 35°07′07″ N, longitude 075°59′16″ W.
10	July 4th, November—Saturday following Thanksgiving Day.	Motts Channel, Banks Channel, Wrightsville Beach, NC, Safety Zone.	The waters of Motts Channel within a 500-yard radius of the fireworks launch site in approximate position latitude 34°12′29″ N, longitude 077°48′27″ W, approximately 560 yards south of Sea Path Marina, Wrightsville Beach, NC.
11	July 4th	Cape Fear River, Southport, NC, Safety Zone.	The waters of the Cape Fear River within a 600-yard radius of the fireworks barge in approximate position latitude 33°54′40″ N, longitude 078°01′18″ W, approximately 700 yards south of the waterfront at Southport, NC.
12	July 4th	Big Foot Slough, Ocracoke, NC, Safety Zone.	The waters of Big Foot Slough within a 300-yard radius of the fireworks launch site in approximate position latitude 35°06′54″ N, longitude 075°59′24″ W, approximately 100 yards west of the Silver Lake Entrance Channel at Ocracoke, NC.
13	August—1st Tuesday	New River, Jacksonville, NC, Safety Zone.	The waters of the New River within a 300-yard radius of the fireworks launch site in approximate position latitude 34°44′45″ N, longitude 077°26′18″ W, approximately one half mile south of the Hwy 17 Bridge, Jacksonville, NC.
14	May—3rd or 4th Saturday, July 4th.	Bath Creek, Bath, NC, Safety Zone.	The waters on Bath Creek within a 300-yard radius of approximate position 35°28′05″ N, 076°48′56″ W, Bath, NC.
15	July 4th, October—2nd Saturday.	Atlantic Intracoastal Waterway, Swansboro, NC, Safety Zone.	The waters of the Atlantic Intracoastal Waterway within a 300-yard radius of the fireworks launch position at approximate position latitude 34°41′02″ N, longitude 077°07′04″ W, located near Swansboro, NC.
16	September—4th or last Saturday.	Shallowbag Bay, Manteo, NC; Safety Zone.	The waters of Shallowbag Bay within a 300-yard radius of a fireworks barge anchored at latitude 35°54′31″ N, longitude 075°39′42″ W.
17	July—3rd or 4th	Atlantic Intracoastal Waterway, Surf City, NC, Safety Zone.	The waters of the Atlantic Intracoastal Waterway within a 300-yard radius of approximate position latitude 34°25′46″ N, longitude 077°33′01″ W, in Surf City, NC.
18	September—3rd, 4th, or last Friday or Saturday.	Neuse River, New Bern, NC, Safety Zone..	The waters within a 300-yard radius of the fireworks launch location at approximate position latitude 35°06′23″ N, longitude 077°01′48″ W, on the Neuse River, New Bern, NC.

Dated: April 22, 2021.

Laura M. Dickey

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

[FR Doc. 2021–08945 Filed 4–29–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1993–0003, EPA–HQ–SFUND–2000–0004, EPA–HQ–SFUND–2000–0007; FRL–10022–95–OLEM]

National Priorities List for Uncontrolled Hazardous Waste Sites; Partial Withdrawal of Proposed Rules

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules; partial withdrawal.

SUMMARY: The Environmental Protection Agency (EPA) is partially withdrawing three previous proposed rules which proposed to add five sites to the Superfund National Priorities List (NPL). The NPL is the list of sites of national priority among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States and its territories. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation.

DATES: The proposed rules to add these five sites to the NPL previously published at 58 FR 27507 (May 10, 1993), 65 FR 30489 (May 11, 2000) and 65 FR 75215 (December 1, 2000) are partially withdrawn effective April 30, 2021.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA proposes sites be placed on the NPL via a proposed rulemaking published in the **Federal Register**. Following a public comment period, most sites are added to the NPL. However, there exists a small subset of sites that have been proposed to the NPL but never added. These sites remain proposed until a decision is made to either withdraw the proposal or add the site to the NPL.

By withdrawing proposals to list sites where listing is no longer appropriate, EPA can reduce the backlog of proposed sites and focus essential resources elsewhere. Once cleanup goals are attained or the determination is made that the site does not pose a significant threat to human health or the environment, it is not necessary to continue the listing process; thus,

preserving the NPL for the highest priority sites.

To facilitate the proposed rule withdrawal process, EPA issued its de-proposal policy, Guidelines for Withdrawing a Proposal to List a Site on the NPL on November 12, 2002. The policy states that in order to qualify for de-proposal, EPA should provide adequate rationale that the site generally either meets deletion-equivalent criteria and no further response under Superfund is appropriate or EPA should explain why such criteria are not applicable to the decision to withdraw the proposal. The Superfund Program Implementation Manual (SPIM) clarifies that de-proposal criteria includes documented deferral or referral of a proposed site to another cleanup authority.

The deletion provisions (40 CFR 300.425(e)) state that releases may be deleted from the NPL where no further response is appropriate. Further, in determining whether a release should be deleted, EPA considers whether any of the following criteria has been met:

- Responsible or other parties have implemented all appropriate response actions required;
- All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or,
- The remedial investigation has shown that the release poses no significant threat to public health or the environment, and, therefore, taking of remedial measures is not appropriate.

EPA is partially withdrawing three previously proposed rules which proposed adding the following five sites to the NPL. All five of the sites meet EPA's de-proposal criteria. Documentation to support EPA's decision to de-propose these sites can be found in each of the site dockets at *https://www.regulations.gov.*

Therefore, the proposal to add the five sites listed in the list that follows to the National Priorities List previously proposed at 58 FR 27507 (May 10, 1993), 65 FR 30489, (May 11, 20000) and 65 FR 75215, December 1, 2000) is hereby withdrawn effective April 30, 2021.

Site name and location	Date proposed for NPL addition/FR citation	Site-specific basis for de-proposal
Broad Brook Mill, East Windsor, CT.	12/01/2000 (65 FR 75215)	Significant progress has been and continues to be made and there is no current risk to human health at the site. The responsible party, Raytheon Technologies, will continue to address the site under the ongoing oversight of the Connecticut Department of Energy and Environmental Protection (CTDEEP) in accordance with state laws. Further documentation may be found in *https://www.regulations.gov* using Docket number EPA–HQ–SFUND–2000–0004.
Chanute Air Force Base, Rantoul, IL.	12/01/2000 (65 FR 75215)	The United States Air Force is performing, and will continue to perform, cleanup activities at the site pursuant to their authority under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) with oversight being conducted by the Illinois Environmental Protection Agency (IEPA). IEPA has been, and will continue to be, the lead agency responsible for overseeing the cleanup and will take or ensure appropriate action through a deferral, enforcement, or other agreement. Further documentation may be found in *https://www.regulations.gov* using Docket number EPA–HQ–SFUND–2000–0004.
Diamond Shamrock Corp. (Painesville Works), Painesville, OH.	05/10/1993 (58 FR 27507)	Operable Unit (OU) #16, the only portion of this site proposed for addition to the NPL, is only one of the 22 OUs that comprise the site. The remaining 21 OUs are being successfully addressed by the responsible parties with oversight by the Ohio Environmental Protection Agency (OEPA) as the lead for cleanup. The State of Ohio through OEPA has agreed to incorporate OU #16 as additional site work under their existing cleanup authority. Through a consent order, OEPA will pursue the monitoring and remedy continuation with the responsible party for the entirety of OU #16 to ensure a unified, site-wide remedy. Further documentation may be found in *https://www.regulations.gov* using Docket number EPA–HQ–SFUND–1993–0003.
Hudson Technologies, Inc., Hillburn, NY.	05/11/2000 (65 FR 30489)	The responsible party, Hudson Technologies, Inc. (HTI), signed an Order on Consent with the New York State Department of Environmental Conservation (NYSDEC) agreeing to operate the remediation system and perform monthly testing at the facility until remaining groundwater contamination has been effectively abated. The treatment system is preventing any off-site migration from occurring. HTI has implemented appropriate response actions and no further Superfund response is required other than continued operation and maintenance (O&M) of the treatment system. Further documentation may be found in *https://www.regulations.gov* using Docket number EPA–HQ–SFUND–2000–0007.
Potter Co., Wesson, MS	05/10/1993 (58 FR 27507)	The Mississippi Department of Environmental Quality (MDEQ) has, and will continue to, ensure all appropriate investigations and cleanup actions are performed pursuant to its state cleanup authority. Cleanup activities continue to be successfully implemented by the responsible party, pursuant to two agreed orders between the responsible party and the state. The main source of contamination was remediated through source removal and no human or ecological exposure pathways remain. The remedy at the site is protective of human health and the environment. Further documentation may be found in *https://www.regulations.gov* using Docket number EPA–HQ–SFUND–1993–0003.

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: April 22, 2021.

Barry Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2021–08988 Filed 4–29–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2020–0581; FRL–10017–51]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (21–2.B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances which are the subject of premanufacture notices (PMNs). This action would require persons to notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this proposed rule. This action would further require that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice (SNUN), and EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken any risk management actions as are required as a result of that determination.

DATES: Comments must be received on or before June 1, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0581, using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions. This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA, which would include the SNUR requirements should these proposed rules be finalized. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after June 1, 2021 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Background

A. What action is the Agency taking?

EPA is proposing these SNURs under TSCA section 5(a)(2) for chemical substances which are the subjects of PMNs P–19–82, P–20–76, and P–20–94. These proposed SNURs would require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

The record for these proposed SNURs, identified as docket ID number EPA–HQ–OPPT–2020–0581, includes information considered by the Agency in developing these proposed SNURs.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III.

C. Do the SNUR general provisions apply?

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to

40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A) (15 U.S.C. 2604(a)(1)(A)). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1) (15 U.S.C. 2604(b) and 2604(d)(1)), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. If EPA determines that the chemical substance is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit. During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters, but reasonably foreseen to occur. EPA is proposing to designate those reasonably foreseen conditions of use as well as certain other circumstances of use as significant new uses.

IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements be added to 40 CFR part 721, subpart E for the chemical substances identified in this unit. For each chemical substance, EPA provides the following information in this unit:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Potentially useful information.
- CFR citation assigned in the regulatory text section of these proposed rules.

The regulatory text section of these proposed rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the proposed rules, may be claimed as CBI.

The chemical substances that are the subject of these proposed SNURs are undergoing premanufacture review. In addition to those conditions of use intended by the submitter, EPA has identified certain other reasonably foreseen conditions of use. EPA has preliminarily determined that the chemicals under their intended conditions of use are not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use for these chemicals. EPA is proposing to designate these reasonably foreseen conditions of use and other circumstances of use as significant new uses. As a result, those significant new uses cannot occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

The substances subject to these proposed rules are as follows:

PMN Number: P–19–82.

Chemical name: Heptanal, 6-hydroxy-2,6-dimethyl-.

CAS number: 62439–42–3.

Basis for action: The PMN states that the use of the substance will be as a fragrance for scented papers, candles, detergents, cleaners, etc. and for non-TSCA fragrance applications. Based on the physical/chemical properties of the substance, test data on the substance, and Structure Activity Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for aquatic toxicity, eye irritation, reproductive toxicity, skin sensitization, and specific target organ toxicity if the chemical is not used following the limitations noted. This proposed SNUR designates the following as ''significant new uses'' requiring further review by EPA:

- Processing the PMN substance to a concentration of greater than or equal to 1.0% in the final end use formulation.
- Release of the PMN substance resulting in surface water concentrations that exceed 14 ppb.

Potentially useful information: EPA has determined that certain information about the effects of the PMN substance may be potentially useful if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of aquatic toxicity, developmental toxicity, eye irritation/corrosion, and specific target organ toxicity testing would help characterize the potential environmental and health effects of the PMN substance.

CFR citation: 40 CFR 721.11568.

PMN Number: P–20–76.

Chemical name: Glycine, reaction products with sodium O-iso-Pr carbonodithioate, sodium salts.

CAS number: 2205080–23–3.

Basis for action: The PMN states that the generic use of the substance will be as a mining chemical. Based on the physical/chemical properties of the substance, test data on the substance, and SAR analysis of test data on analogous substances, EPA has identified concerns for aquatic toxicity, carcinogenicity, genetic toxicity, reproductive toxicity, serious eye damage, skin corrosion, skin sensitization, and specific target organ toxicity if the chemical is not used following the limitations noted. This proposed SNUR designates the following as ''significant new uses'' requiring further review by EPA:

- Domestic manufacture of the PMN substance.
- Release of the PMN substance resulting in surface water concentrations that exceed 21 ppb.

Potentially useful information: EPA has determined that certain information about the effects of the PMN substance may be potentially useful if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of aquatic toxicity, carcinogenicity, eye irritation/corrosion, genetic toxicity, reproductive toxicity, skin sensitization, and specific target organ toxicity testing

would help characterize the potential environmental and health effects of the PMN substance.

CFR citation: 40 CFR 721.11569.

PMN Number: P–20–94.

Chemical name: Alkanedioic acid, polymer with tri-alkyl-isocyanatocarbomonocycle, dialkylglycols, ester with 2,3-dihydroxypropyl alkyl ester, 2-hydroxyethyl methacrylate-blocked (generic).

CAS number: Not Available.

Basis for action: The PMN states that the use of the substance will be as a formulation component in UV/EB coatings, inks, 3D printing/stereolithography/additive manufacturing, and adhesive manufacturing. Based on the physical/chemical properties of the substance and Structure Activity Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for eye irritation, skin irritation, and skin sensitization, if the chemical is not used following the limitations noted. This proposed SNUR designates the following as ''significant new uses'' requiring further review by EPA:

- Use without personal protective equipment involving a National Institute for Occupational Safety and Health (NIOSH)-certified respirator with an Assigned Protection Factor (APF) of at least 50 (or 1,000 for spray applications), unless the substance was manufactured with no greater than 3.5% acrylate feedstock by weight and any residual isocyanate in the substance is present at no greater than 0.1% by weight.
- Use of the PMN substance in a consumer product.

Potentially useful information: EPA has determined that certain information about the effects of the PMN substance may be potentially useful if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of occupational exposure monitoring would help characterize the potential effects of the PMN substance.

CFR citation: 40 CFR 721.11570.

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are the subject of these proposed SNURs and as further discussed in Unit IV., EPA identified certain other reasonably foreseen conditions of use, in addition to those conditions of use intended by the submitter. EPA has preliminarily determined that the chemical under the intended conditions of use is not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use. EPA is proposing to designate these conditions of use as well as certain other circumstances of use as significant new uses. As a result, those significant new uses cannot occur without going through a separate, subsequent EPA review and determination process associated with a SNUN.

B. Objectives

EPA is proposing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under TSCA section 5(a)(3)(C) that the chemical, under the conditions of use, is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.
- To be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a proposed SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

VI. Applicability of the Proposed Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule were undergoing premanufacture review at the time of signature of this proposed rule and were not on the TSCA Inventory. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for the chemical substances subject to these proposed SNURs, EPA concludes that the proposed significant new uses are not ongoing.

EPA designates December 4, 2020 (date of web posting of this proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under section 5 allowing manufacture or processing to proceed. In developing this proposed rule, EPA has recognized that, given EPA's general practice of posting proposed rules on its website a week or more in advance of **Federal Register** publication, this objective could be thwarted even before **Federal Register** publication of the proposed rule.

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially

useful information identified in Unit IV. will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information described in Unit IV. may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

VIII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this proposed rule. EPA's complete economic analysis is available in the docket for this rulemaking.

X. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action proposes to establish SNURs for new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to the PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* I hereby certify that promulgation of this proposed SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities.

A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018, only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal

government will be impacted by this proposed rule. As such, EPA has determined that this proposed rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1531–1538 *et seq.*).

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 30, 2020.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, EPA proposes to amend 40 CFR part 721 as follows:

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add §§ 721.11568 through 721.11570 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

* * * * *

§ 721.11568 Heptanal, 6-hydroxy-2,6-dimethyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as heptanal, 6-hydroxy-2,6-dimethyl- (PMN P–19–82, CAS No. 62439–42–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to process the substance to a concentration of greater than or equal to 1.0% in the final end use formulation.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 14.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11569 Glycine, reaction products with sodium O-iso-Pr carbonodithioate, sodium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as glycine, reaction products with sodium O-iso-Pr carbonodithioate, sodium salts (PMN P–20–76, CAS No. 2205080–23–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 21.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11570 Alkanedioic acid, polymer with tri-alkyl-isocyanatocarbomonocycle, dialkylglycols, ester with 2,3-dihydroxypropyl alkyl ester, 2-hydroxyethyl methacrylate-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as alkanedioic acid, polymer with tri-alkyl-isocyanatocarbomonocycle, dialkylglycols, ester with 2,3-dihydroxypropyl alkyl ester, 2-hydroxyethyl methacrylate-blocked (PMN P–20–94) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (5) and (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for

Occupational Safety and Health assigned protection factor of at least 50 (1000 for spray application). For purposes of § 721.63(a)(6), particulate. The provisions of this section do not apply when both of the following conditions are met: (1) The substance was manufactured with no greater than 3.5% acrylate feedstock by weight, and (2) any residual isocyanate in the substance is present at no greater than 0.1% by weight.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2021–08883 Filed 4–29–21; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–176; RM–11903; DA 21–459; FR ID 23068]

Television Broadcasting Services Missoula, Montana

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) has before it a petition for rulemaking filed by Sinclair Media Licensee, LLC (Petitioner), the licensee of KECI–TV (NBC), channel 13, Missoula, Montana. The Petitioner requests the substitution of channel 20 for channel 13 at Missoula, Montana in the DTV Table of Allotments.

DATES: Comments must be filed on or before June 1, 2021 and reply comments on or before June 14, 2021.

ADDRESSES: You may submit comments, identified by MB Docket No. 21–176, by any of the following methods:

- *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the proposed rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Paul A. Cicelski, Esq., Lerman Senter, PLLC, 2001 L Street NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–176; RM–11903; DA 21–459, adopted April 21, 2021, and released April 21, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

In support of its channel substitution request, the Petitioner states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, and also that the reception of VHF signals requires larger antennas, that are generally not well suited to the mobile applications expected under flexible use, relative to UHF channels. According to the Petitioner, KECI–TV has received numerous complaints from viewers unable to receive an over-the-air signal, despite being able to receive signals from other stations. In addition, the Petitioner states that while the proposed channel 20 noise limited contour does not completely encompass the relevant channel 13 noise limited contour, there would be a loss of service to only 65 people. In addition, the Petitioner states that KECI–TV's proposed channel 20 facility is predicted to serve a total of 252,689 persons, a net gain of 38,879 potential viewers over the existing KECI–TV channel 13 facility. The Bureau used the technical parameters of KECI–TV's original post-transition digital channel 13 facility (File No. BPCDT–20080327AFR) in determining any predicted loss which may occur from the proposed channel substitution.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554.

Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(i), amend the Post-Transition Table of DTV Allotments under Montana by revising the entry for Missoula to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
Montana	
* * * * *	
Missoula	7, *11, 17, 20, 23
* * * * *	

[FR Doc. 2021–09032 Filed 4–29–21; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 86, No. 82

Friday, April 30, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of 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 New York Advisory Committee (Committee) will hold a series of meetings via WebEx on Friday, June 4; Friday, June 18; and Friday, June 25, 2021 from 12:00 p.m. to 5:00 p.m. ET for the purpose of hearing testimony on potential racial discrimination in eviction policies and enforcement in New York, with a focus on Buffalo, Albany and New York City.

DATES: The meetings will be held on:
Friday, June 4, 2021 from 12:00 p.m. to 5:00 p.m. Eastern Time
Friday, June 18, 2021 from 12:00 p.m. to 5:00 p.m. Eastern Time
Friday, June 25, 2021 from 12:00 p.m. to 5:00 p.m. Eastern Time.

ADDRESSES:

MANDARIN AND SPANISH CALL-IN INFORMATION

- To join (audio only) (MANDARIN) Dial: 800–367–2403; Conference ID: 8858192
- To join (audio only) (SPANISH) Dial: 800–353–6461; Conference ID: 7895312
- If joining by phone and viewing slides through WebEx, do not connect to WebEx audio.

WEB ACCESS AND ENGLISH CALL-IN INFORMATION

June 4, 2021 Briefing

- WebEx Link for Audio and Video: *https://tinyurl.com/NYBriefingJune4*
- Audio only: 800–360–9505; Access Code: 199 891 0456

June 18, 2021 Briefing

- WebEx Link: *https://tinyurl.com/NYBriefingJune18*
- Audio only: 800–360–9505; Access Code: 199 894 3105

June 25, 2021 Briefing

- WebEx Link: *https://tinyurl.com/NYBriefingJune25*
- Audio only: 800–360–9505; Access Code: 199 491 6990.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 202–809–9618.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number. To request additional accommodations, please email *mtrachtenberg@usccr.gov* at least 7 days prior to the meeting for which accommodations are requested.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit at 202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzmAAAQ* under the Commission on Civil Rights, New York Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or phone number.

JUNE 4, 2021 AGENDA

12:00–2:00 p.m.: Researchers Panel
- 12:00 p.m.–1:00 p.m.: Invited Speakers
- 1:00 p.m.–2:00 p.m.: Committee Member Q&A

2:00–2:15 p.m.: Break 1
2:15–4:15 p.m.: Academics Panel
- 2:15–3:15 p.m.: Invited Speakers
- 3:15–4:15 p.m.: Committee Member Q&A

4:15–4:30 p.m.: Break 2
4:30–5:00 p.m.: Public Comment

JUNE 18, 2021 AGENDA

12:00–2:00 p.m.: Advocates Panel
- 12:00–1:00 p.m.: Invited Speakers
- 1:00–2:00 p.m.: Committee Member Q&A

2:00–2:15 p.m.: Break 1
2:15–4:15 p.m.: Government Panel
- 2:15–3:15 p.m.: Invited Speakers
- 3:15–4:15 p.m.: Committee Member Q&A

4:15–4:30 p.m.: Break 2
4:30–5:00 p.m.: Public Comment

JUNE 25, 2021 AGENDA

12:00–1:00 p.m.: Multi-Sector Panel 1
- 12:00–12:30 p.m.: Invited Speakers
- 12:30–1:00 p.m.: Committee Member Q&A

1:00–2:00 p.m.: Multi-Sector Panel 2
- 1:00–1:30 p.m.: Invited Speakers
- 1:30–2:00 p.m.: Committee Member Q&A

2:00–2:15 p.m.: Break 1
2:15–4:15 p.m.: Open Forums
- 2:15–3:15 p.m.: Landlords
- 3:15–4:15 p.m.: Renters

4:15–4:30 p.m.: Break 2
4:30–5:00 p.m.: Public Comment

Dated: April 27, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–09086 Filed 4–29–21; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–32–2021]

Foreign-Trade Zone (FTZ) 38—Charleston, South Carolina; Notification of Proposed Production Activity; BMW Manufacturing Company, LLC (Passenger Motor Vehicles); Spartanburg, South Carolina

BMW Manufacturing Company, LLC (BMW MC) submitted a notification of proposed production activity to the FTZ Board for its facility in Spartanburg, South Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 21, 2021.

BMW MC already has authority to produce gasoline and diesel-powered motor vehicles, gasoline-powered hybrid plug-in electric motor vehicles, motor vehicle bodies, stamped body parts, and lithium ion batteries within Subzone 38A. The current request would add diesel-powered hybrid plug-in electric motor vehicles to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt BMW MC from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components in the existing scope of authority, BMW MC would be able to choose the duty rates during customs entry procedures that apply to diesel powered hybrid plug-in electric motor vehicles (duty rate 2.5%). BMW MC would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

There are no new materials/components included in this notification.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 9, 2021.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: April 26, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–09070 Filed 4–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–33–2021]

Foreign-Trade Zone (FTZ) 293—Limon, Colorado; Notification of Proposed Production Activity; Kaiser Premier LLC (Special Purpose Vehicles); Fort Morgan, Colorado

The Town of Limon, Colorado, grantee of FTZ 293, submitted a notification of proposed production activity to the FTZ Board on behalf of Kaiser Premier LLC (Kaiser), located in Fort Morgan, Colorado. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 19, 2021.

The Kaiser facility is located within Subzone 293A. The facility is used for production of special purpose vehicles. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Kaiser from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Kaiser would be able to choose the duty rates during customs entry procedures that apply to combined sewer cleaning and water recycling vehicles and hydro excavation equipment vehicles (duty free). Kaiser would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include back end vehicle body kits, water distributors, hose booms, hose guides, hand reels, water recycling systems, high pressure pumps, control cabinets, stainless steel tank covers, vacuum pumps, and copper check valves (duty rate ranges from duty free to 3.0%). The request indicates that certain materials/components are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 9, 2021.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: April 26, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–09073 Filed 4–29–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Final Determination of No Shipments; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that Heze Huayi Chemical Co., Ltd. (Heze Huayi) sales of chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (China) have been made at less than normal value during the period of review (POR), June 1, 2018, through May 31, 2019, and Juancheng Kangtai Chemical Co., Ltd. (Kangtai) had no shipments of subject merchandise during the POR.

DATES: Applicable April 30, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Carey, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3964.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2020, the Department of Commerce (Commerce) published its *Preliminary Results* of the

administrative review of the antidumping duty order on chlorinated isos from the People's Republic of China (China).[1] The petitioners in this investigation are Bio-lab, Inc., Clearon Corp., and Occidental Chemical Corp. (collectively, the petitioners). The mandatory respondents in this administrative review are Heze Huayi and Kangtai. A complete summary of the events that occurred since publication of the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2]

Scope of the Order

The products covered by the order are chlorinated isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. For a full description of the scope of the order, *see* Issues and Decision Memorandum.[3]

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs submitted by parties in this review in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues addressed in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made two changes to our margin calculations. Specifically, we applied the correct ocean freight rate to convert the Mexican Global Trade Atlas (GTA) data from a ''freight-on-board'' (FOB) to a ''cost of insurance and freight'' (CIF) basis for certain inputs. In addition, we have revised the Mexican GTA import data with respect to HTS 282720 for calcium chloride for exports that were not properly excluded.

Final Determination of No Shipments

In the *Preliminary Results,* we found that Kangtai had no entries of subject merchandise during the POR.[4] No parties commented on, nor did we receive information that contradicts this preliminary determination. Therefore, for the final results, we continue to find that Kangtai had no reviewable entries during the POR.

Separate Rates

In the *Preliminary Results,* we found that evidence provided by Heze Huayi supported finding an absence of both *de jure* and *de facto* government control, and, therefore, we preliminarily granted a separate rate to Heze Huayi.[5] No parties commented on, nor did we receive information that contradicts this preliminary determination. Therefore, for the final results, we continue to find that Heze Huayi is eligible for a separate rate.

Final Results of Administrative Review

Commerce determines that the following weighted-average dumping margin exists for Heze Huayi for the period of June 1, 2018, through May 31, 2019:

Exporter	Weighted-average dumping margin percentage
Heze Huayi Chemical Co., Ltd. ..	70.31

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Consistent with its recent notice,[6] Commerce intends to issue appropriate assessment instructions directly 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).

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[7] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.[8] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[9] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[10]

China-Wide Entity

Pursuant to Commerce's assessment practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, Commerce will instruct CBP to liquidate such entries at the China-wide entity rate. Additionally, if Commerce determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide entity rate.[11]

Commerce's policy regarding the conditional review of the China-wide entity applies to this administrative review.[12] Under this policy, the China-

[1] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2018–2019,* 85 FR 67709 (October 26, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Chlorinated Isocyanurates from China; 2018–2019, issued concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *Id.*

[4] *See Preliminary Results,* 85 FR 67709–67710.

[5] *See Preliminary Results* PDM at 3–5.

[6] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

[7] *See* 19 CFR 351.212(b)(1).

[8] *Id.*

[9] *Id.*

[10] *See* 19 CFR 351.106(c)(2).

[11] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011). For an explanation on the derivation of the China-wide rate, *see also Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China,* 70 FR 24502, 24505 (May 10, 2005).

[12] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and*

Continued

wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, we did not review the entity in this segment of the proceeding. Thus, the China-wide entity's rate (*i.e.,* 285.63 percent) did not change.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed China and non-China exporters not listed above that have separate rates, the cash deposit rate will continue to be the existing producer/exporter-specific rate published for the most recent period; (3) for all China exporters of subject merchandise that have not been found to be eligible for a separate rate, the cash deposit rate will be the China-wide rate of 285.63 percent; and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter(s) that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed regarding these final results within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Notification to Importers Regarding the Reimbursement of Duties

This notice serves as a final 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 POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: April 26, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–09075 Filed 4–29–21; 8:45 am]

BILLING CODE 3510–DS–P

Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings, 78 FR 65963 (November 4, 2013).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–857]

Certain Softwood Lumber Products from Canada: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is initiating a changed circumstances review (CCR) to determine whether Chaleur Forest Products LP (CFP LP) and Chaleur Forest Products Inc. (CFP Inc.) are the successors-in-interest (SIIs) to Chaleur Sawmills LP (Chaleur LP) and Fornebu Lumber Co. Inc. (Fornebu Inc.), respectively, in the context of the antidumping duty (AD) order on certain softwood lumber products from Canada. We preliminarily determine that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc., respectively.

DATES: Applicable April 30, 2021.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, 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) 481–6071.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2018, Commerce published in the **Federal Register** an AD order on certain softwood lumber products from Canada.[1] On March 11, 2021, CFP LP and CFP Inc. (collectively the Chaleur Companies) requested that, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3), Commerce conduct a CCR of the *Order* to confirm that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc., respectively, and accordingly, to assign them the cash deposit rates of Chaleur LP and Fornebu Inc.[2] In its submission, the Chaleur Companies state that Chaleur LP and Fornebu Inc. undertook name changes to CFP LP and CFP Inc., respectively, but are otherwise unchanged.[3] In a March 19, 2021, filing, the Committee Overseeing Action for Lumber International Trade

[1] *See Certain Softwood Lumber Products from Canada: Antidumping Duty Order and Partial Amended Final Determination,* 83 FR 350 (January 3, 2018) (*Order*).

[2] *See* Chaleur Companies' Letter, ''Chaleur's Request for Changed Circumstances Reviews,'' dated March 11, 2021 (CCR Request).

[3] *Id.* at 2–3.

Investigations or Negotiations (hereinafter referred to as the petitioner) argued that Fornebu Inc. was not eligible to receive a cash deposit rate the differs from the all-others rate that is listed in the *Order* and, thus, argued that Commerce should refrain from initiating the CCR.[4] In a March 29, 2021, filing, the Chaleur Companies argue that Fornebu Inc. is eligible for a CCR and that Commerce should therefore initiate and preliminarily determine that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc, respectively.[5]

Scope of the *Order*

The merchandise subject to the *Order* is certain softwood lumber products.[6] The products are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 4406.11.0000; 4406.91.0000; 4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4407.11.00.01; 4407.11.00.02; 4407.11.00.42; 4407.11.00.43; 4407.11.00.44; 4407.11.00.45; 4407.11.00.46; 4407.11.00.47; 4407.11.00.48; 4407.11.00.49; 4407.11.00.52; 4407.11.00.53; 4407.12.00.01; 4407.12.00.02; 4407.12.00.17; 4407.12.00.18; 4407.12.00.19; 4407.12.00.20; 4407.12.00.58; 4407.12.00.59; 4407.19.05.00; 4407.19.06.00; 4407.19.10.01; 4407.19.10.02; 4407.19.10.54; 4407.19.10.55; 4407.19.10.56; 4407.19.10.57; 4407.19.10.64; 4407.19.10.65; 4407.19.10.66; 4407.19.10.67; 4407.19.10.68; 4407.19.10.69; 4407.19.10.74; 4407.19.10.75; 4407.19.10.76; 4407.19.10.77; 4407.19.10.82; 4407.19.10.83; 4407.19.10.92; 4407.19.10.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; 4418.50.0010; 4418.50.0030; 4418.50.0050 and 4418.99.10.00. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Initiation and Preliminary Results of CCR

Pursuant to section 751(b)(1) of the Act, Commerce will conduct a CCR upon receipt of information concerning, or a request from, an interested party for a review of an AD order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by the Chaleur Companies supporting their claim that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc., respectively, demonstrates changed circumstances sufficient to warrant such a review.[7] Therefore, in accordance with section 751(b)(1)(A) of the Act and 19 CFR 351.216(d) and (e), we are initiating a CCR based upon the information contained in Chaleur Companies' filings.

Section 351.221(c)(3)(ii) of Commerce's regulations permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results if Commerce concludes that expedited action is warranted.[8] In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.[9] In this CCR, pursuant to section 751(b) of the Act, Commerce conducted an SII analysis. In making a successor-in-interest determination, Commerce examines several factors, including, but not limited to, changes in the following: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.[10] While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally, Commerce will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.[11] Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, Commerce may assign the new company the cash deposit rate of its predecessor.[12]

In accordance with 19 CFR 351.216, we preliminarily determine that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc., respectively. Record evidence, as submitted by the Chaleur Companies, indicates that CFP LP and CFP Inc. operate as essentially the same business entities as Chaleur LP and Fornebu Inc., respectively, with respect to the subject merchandise.[13] For the complete successor-in-interest analysis, including discussion of business proprietary information, refer to the accompanying Initiation and Preliminary Decision Memorandum. Commerce will issue its final results of the review in accordance with the time limits set forth in 19 CFR 351.216(e).

Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice. In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days

[4] *See* Petitioner's Letter, ''Response to Chaleur's Request for Changed Circumstances Reviews,'' dated March 19, 2021 at 2.

[5] *See* Chaleur Companies' Letter, ''Rebuttal to Petitioner's Response to Chaleur's Request for Changed Circumstances Reviews,'' dated March 29, 2021 at 2.

[6] For a complete description of the *Order, see* Memorandum, ''Initiation and Preliminary Results of Changed Circumstances Review: Preliminary Decision Memorandum,'' dated concurrently with this notice (Initiation and Preliminary Decision Memorandum).

[7] *See* 19 CFR 351.216(d).

[8] *See* 19 CFR 351.221(c)(3)(ii); *see also Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 80 FR 33480, 33480–41 (June 12, 2015) (*Pasta from Italy Preliminary Results*), unchanged in *Certain Pasta from Italy: Final Results of Changed Circumstances Review,* 80 FR 48807 (August 14, 2015) (*Pasta from Italy Final Results*).

[9] *See, e.g., Pasta from Italy Preliminary Results,* 80 FR at 33480–41, unchanged in *Pasta from Italy Final Results,* 80 FR at 48807.

[10] *See, e.g., Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 81 FR 75376 (October 31, 2016) (*Shrimp from India Preliminary Results*), unchanged in *Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 81 FR 90774 (December 15, 2016) (*Shrimp from India Final Results*).

[11] *See, e.g., Shrimp from India Preliminary Results,* 81 FR at 75377, unchanged in *Shrimp from India Final Results,* 81 FR at 90774.

[12] *Id.; see also Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan,* 67 FR 58, 59 (January 2, 2002); *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review,* 75 FR 34688, 34689 (June 18, 2010); and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review,* 63 FR 14679 (March 26, 1998), unchanged in *Circular Welded Non-Alloy Steel Pipe from Korea; Final Results of Antidumping Duty Changed Circumstances Review,* 63 FR 20572 (April 27, 1998), in which Commerce found that a company which only changed its name and did not change its operations is a SII to the company before it changed its name.

[13] *See* CCR Request.

after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14] All comments are to be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) available to registered users at *https://access.trade.gov,* and must also be served on interested parties. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day it is due.[15] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[16]

Consistent with 19 CFR 351.216(e), we will issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding. This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216(b), 351.221(b) and 351.221(c)(3).

Dated: April 23, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2021–09071 Filed 4–29–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Integrated Drought Information System (NIDIS) Executive Council Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The National Integrated Drought Information System (NIDIS) Program Office will hold a virtual, organizational meeting of the NIDIS Executive Council on May 4, 2021.

DATES: The meeting will be held Tuesday, May 4, 2021 from 11:00 a.m. EST to 2:00 p.m. EST. These times and the agenda topics are subject to change.

ADDRESSES: The meeting will be held virtually. To register, please visit: *https://cpaess.ucar.edu/meetings/2021-nidis.* You must register online to receive the webcast meeting link and audio teleconference information for participation.

FOR FURTHER INFORMATION CONTACT: Veva Deheza, NIDIS Executive Director, David Skaggs Research Center, Room GD102, 325 Broadway, Boulder, CO 80305. Phone Number: 303–487–3431; Email: *Veva.Deheza@noaa.gov;* or visit the NIDIS website at *www.drought.gov.*

SUPPLEMENTARY INFORMATION: The National Integrated Drought Information System (NIDIS) was established by Public Law 109–430 on December 20, 2006, and reauthorized by Public Law 113–86 on March 6, 2014 and Public Law 115–423 on January 7, 2019 , with a mandate to provide an effective drought early warning system for the United States; coordinate, and integrate as practicable, Federal research in support of a drought early warning system; and build upon existing forecasting and assessment programs and partnerships. *See* 15 U.S.C. 313d. The Public Law also calls for consultation with ''relevant Federal, regional, State, tribal, and local government agencies, research institutions, and the private sector'' in the development of NIDIS. 15 U.S.C. 313d(c). The NIDIS Executive Council provides the NIDIS Program Office with an opportunity to engage in individual consultation with senior resource officials from NIDIS's Federal partners, as well as leaders from state and local government, academia, nongovernmental organizations, and the private sector.

Status: This meeting will be open to public participation. Individuals interested in attending should register at *https://cpaess.ucar.edu/meetings/2021-nidis.* Please refer to this web page for the most up-to-date meeting times and agenda.

Matters to be Considered: The meeting will include the following topics: (1) NIDIS implementation updates and 2021 priorities, including response to current drought conditions in the Western United States, (2) Executive Council member updates relevant to Climate Adaptation and Resilience, Drought, Water, and Fire, (3) Federal Agency Water and Drought Priorities, Executive Orders, and Legislative Updates, and (4) NIDIS Implementation Plan 2021–2025 as well as program growth and emerging issues.

Dated: April 21, 2021.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–09080 Filed 4–29–21; 8:45 am]

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Rules for Patent Maintenance Fees

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), in accordance with the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0016 (Rules for Patent Maintenance Fees). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before June 29, 2021.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email: InformationCollection@uspto.gov.* Include ''0651–0016 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Parikha Mehta, Patent Examination Policy Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office (USPTO), P.O. Box 1450,

[14] *See* 19 CFR 351.309(c)(2).

[15] *See* 19 CFR 351.303(b).

[16] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Alexandria, VA 22313–1450; by telephone at 571–272–3248; or by email at *Parikha.Mehta@uspto.gov* with ''0651–0016 comment'' in the subject line. Additional information about this information collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

Under 35 U.S.C. 41 and 37 CFR 1.20(e)–(h), 1.362, 1.363, 1.366, 1.377, and 1.378, the United States Patent and Trademark Office (USPTO) charges fees for maintaining in force all utility patents based on applications filed on or after December 12, 1980. Payment of these maintenance fees is due at 3½, 7½, and 11½ years after the date the patent was granted. If the USPTO does not receive payment of the appropriate maintenance fee and any applicable surcharge within a grace period of six months following each of the above due dates (at 4, 8, or 12 years after the date of grant), the patent will expire at that time. After a patent expires, it is no longer enforceable. Maintenance fees are not required for design, plant, or reissue patents if the patent being reissued did not require maintenance fees.

Payments of maintenance fees that are submitted during the 6-month grace period before patent expiration must include the appropriate surcharge as indicated by 37 CFR 1.20(h). Submissions of maintenance fee payments and surcharges must include the relevant patent number and the corresponding United States application number in order to identify the correct patent and ensure proper crediting of the fee being paid.

If the USPTO refuses to accept and record a maintenance fee payment that was submitted prior to the expiration of a patent, the patentee may petition the Director to accept and record the maintenance fee under 37 CFR 1.377. This petition must be accompanied by the fee indicated in 37 CFR 1.17(g), which may be refunded if it is determined that the refusal to accept the maintenance fee was due to an error by the USPTO.

If a patent has expired due to nonpayment of a maintenance fee, the patentee may petition the Director to accept a delayed payment of the maintenance fee under 37 CFR 1.378. The Director may accept the payment of a maintenance fee after the expiration of the patent if the petitioner shows to the satisfaction of the Director that the delay in payment was unintentional. Petitions to accept unintentionally delayed payment must also be accompanied by the required maintenance fee and the petition fee as set forth in 37 CFR 1.17(m). If the Director accepts the maintenance fee payment upon petition, then the patent is reinstated. If the USPTO denies a petition to accept delayed payment of a maintenance fee in an expired patent, the patentee may petition the Director to reconsider that decision under 37 CFR 1.378(d).

The rules of practice (37 CFR 1.33(d) and 1.363) permit applicants, patentees, assignees, or their representatives of record to specify a ''fee address'' for correspondence related to maintenance fees that is separate from the correspondence address associated with a patent or application. A fee address must be an address that is associated with a USPTO customer number. Customer numbers may be requested by using the Request for Customer Number Form (PTO/SB/125), which is covered under OMB control number 0651–0035. Maintaining a correct and updated address is necessary so that fee-related correspondence from the USPTO will be properly received by the applicant, patentee, assignee, or authorized representative. If a separate fee address is not specified for a patent or application, the USPTO will direct fee-related correspondence to the correspondence address of record.

This information collection covers the forms needed to submit a patent maintenance fee payment (PTO/SB/45 and AIA/47) and to designate or change a fee address (PTO/SB/47). The USPTO also offers two different versions of the form for petitions to accept unintentionally delayed payment of maintenance fee in an expired patent under 37 CFR 1.378(b). In addition to the PDF version that may be completed electronically, the USPTO also offers a Web-based ePetition. Customers may also submit maintenance fee payments and surcharges incurred during the 6-month grace period before patent expiration by using the Maintenance Fee Transmittal Form (PTO/SB/45) or by paying online through the USPTO's online Patent Maintenance Fees Storefront. However, to pay a maintenance fee after patent expiration, the maintenance fee payment and the petition fee, as set forth in 37 CFR 1.17(m), must be filed together with a petition to accept unintentionally delayed payment. The USPTO accepts online maintenance fee payments by credit card, deposit account, or electronic funds transfer (EFT). Otherwise, non-electronic payments may be made by check, credit card, or deposit account.

II. Method of Collection

Items in this information collection may be submitted via online electronic submissions. In limited circumstances, applicants may be permitted to submit the information in paper form by mail, fax, or hand delivery.

III. Data

OMB Number: 0651–0016.

Form Numbers:

- PTO/SB/45 (Maintenance Fee Transmittal Form)
- PTO/SB/47 (''Fee Address'' Indication Form)
- PTO/SB/66 (Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b))

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector; individuals or households.

Estimated Number of Respondents: 577,892 per year.

Estimated Number of Responses: 577,892 per year.

Estimated Time per Response: The USPTO estimates that it takes the public approximately 0.5 minutes (0.01 hours) to 8 hours to complete this information, depending upon the item. This includes the time to gather the necessary information, prepare and maintain the documents, and submit the items to the USPTO.

Estimated Total Annual Hour Burden: 12,945 hours.

Estimated Total Annual Cost Burden (Hourly): $2,771,565.

TABLE 1—BURDEN HOUR/BURDEN COST TO RESPONDENTS FOR PRIVATE SECTOR

Item No.	Item	Estimated annual respondents	Estimated annual responses (year) (a)	Estimated time for response (hours) (b)	Estimated annual burden (hour/year) (a) × (b) = (c)	Rate [1] ($/hour) (d)	Estimated annual respondent cost burden (c) × (d) = (e)
1	Maintenance Fee Transmittal Transactions (PTO/SB/45).	9,923	9,923	0.08 (5 minutes)	794	$145	$115,130
2	Electronic Maintenance Fee Transactions.	486,092	486,092	0.01 (0.5 minutes)	4,861	145	704,845
3	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) (PTO/SB/66).	2,288	2,288	1	2,288	400	915,200
4	Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377).	1	1	4	4	400	1,600
5	Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(d)).	121	121	8	968	400	387,200
6	''Fee Address'' Indication Form (PTO/SB/47).	39,013	39,013	0.08 (5 minutes)	3,121	145	$452,545
Totals		537,438	537,438		12,036		2,576,520

[1] 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); *https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey.* The USPTO uses the mean rate for attorneys in private firms which is $400 per hour. The hourly rate for paraprofessional/paralegals is estimated at $145 from data published in the 2018 Utilization and Compensation Survey by the National Association of Legal Assistants (NALA).

TABLE 2—BURDEN HOUR/BURDEN COST TO RESPONDENTS FOR RULES FOR INDIVIDUALS OR HOUSEHOLDS

Item No.	Item	Estimated annual respondents	Estimated annual responses (year) (a)	Estimated time for response (hours) (b)	Estimated annual burden (hour/year) (a) × (b) = (c)	Rate [2] ($/hour) (d)	Estimated annual respondent cost burden (c) × (d) = (e)
1	Maintenance Fee Transmittal Transactions (PTO/SB/45).	747	747	0.08 (5 minutes)	60	$145	$8,700
2	Electronic Maintenance Fee Transactions.	36,588	36,588	0.01 (0.5 minute)	366	145	53,070
4	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) (PTO/SB/66).	172	172	1	172	400	68,800
5	Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377).	1	1	4	4	400	1,600
6	Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(d)).	9	9	8	72	400	28,800
7	''Fee Address'' Indication Form (PTO/SB/47).	2,937	2,937	0.08 (5 minutes)	235	145	34,075
Totals		40,454	40,454		909		195,045

[2] 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); *https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey.* The USPTO uses the mean rate for attorneys in private firms which is $400 per hour. The hourly rate for paraprofessional/paralegals is estimated at $145 from data published in the 2018 Utilization and Compensation Survey by the National Association of Legal Assistants (NALA).

Estimated Total Annual Cost Burden (Non-Hourly): $1,586,634,038. This information collection has no capital start-up, maintenance, or operating fees. This information collection does has filing fees and postage costs. The filing fees are associated with the maintenance of patents, which are listed in the table below. The total non-hour respondent cost burden for this information collection in the form of filing fees ($1,586,633,000) and postage costs ($1,038) is approximately $1,586,634,038.

TABLE 3—FILING FEES—NON-HOUR COST BURDEN FOR RULES FOR PATENT MAINTENANCE FEES

Item No.	Item	Responses (a)	Filing fee (b)	Burden $ (a) × (b) = (c)
1	For Maintaining an Original or Any Reissue Patent, Due at 3.5 Years (undiscounted entity)	220,200	$2,000	$440,400,000
1	For Maintaining an Original or Any Reissue Patent, Due at 3.5 Years (small entity)	49,000	1,000	49,000,000
1	For Maintaining an Original or Any Reissue Patent, Due at 3.5 Years (micro entity)	4,500	500	2,250,000
1	For Maintaining an Original or Any Reissue Patent, Due at 7.5 Years (undiscounted entity)	134,500	3,760	505,720,000
1	For Maintaining an Original or Any Reissue Patent, Due at 7.5 Years (small entity)	26,600	1,880	50,008,000
1	For Maintaining an Original or Any Reissue Patent, Due at 7.5 Years (micro entity)	1,500	940	1,410,000
1	For Maintaining an Original or Any Reissue Patent, Due at 11.5 Years (undiscounted entity)	63,800	7,700	491,260,000
1	For Maintaining an Original or Any Reissue Patent, Due at 11.5 Years (small entity)	9,200	3,850	35,420,000
1	For Maintaining an Original or Any Reissue Patent, Due at 11.5 Years (micro entity)	600	1,925	1,155,000
1	Surcharge—3.5 year—Late Payment Within 6 Months (undiscounted entity)	3,600	500	1,800,000
1	Surcharge—3.5 year—Late Payment Within 6 Months (small entity)	6,450	250	1,612,500
1	Surcharge—3.5 year—Late Payment Within 6 Months (micro entity)	1,200	125	150,000
1	Surcharge—7.5 year—Late Payment Within 6 Months (undiscounted entity)	2,550	500	1,275,000
1	Surcharge—7.5 year—Late Payment Within 6 Months (small entity)	3,550	250	887,500
1	Surcharge—7.5 year—Late Payment Within 6 Months (micro entity)	450	125	56,250
1	Surcharge—11.5 year—Late Payment Within 6 Months (undiscounted entity)	1,450	500	725,000
1	Surcharge—11.5 year—Late Payment Within 6 Months (small entity)	1,500	250	375,000
1	Surcharge—11.5 year—Late Payment Within 6 Months (micro entity)	250	125	31,250
3	Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force (undiscounted entity).	650	2,100	1,365,000
3	Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force (small entity)	1,500	1,050	1,575,000
3	Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force (micro entity)	300	525	157,500
Totals				1,586,633,000

The public may submit the forms and petitions in this information collection to the USPTO by mail through the United States Postal Service. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be $8.05. The USPTO estimates approximately 129 submissions per year may be mailed to the USPTO, for a total postage cost of $1,038 per year.

Respondent's Obligation: Required to obtain or retain benefits.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personal identifying information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2021–09035 Filed 4–29–21; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Third-Party Submissions and Protests

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), in accordance with the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0062 (Third-Party Submissions and Protests). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before June 29, 2021.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email: InformationCollection@uspto.gov.* Include ''0651–0062 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Parikha Mehta, Patent Examination Policy Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–3248; or by email to *Parikha.Mehta@uspto.gov* with ''0651–0062 comment'' in the subject line. Additional information about this information collection is also available at *http://*

www.reginfo.gov under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 *et seq.* to examine an application for patent and, when appropriate, issue a patent. The provisions of 35 U.S.C. 122(c), 122(e), 131, and 151, as well as 37 CFR 1.290 and 1.291, limit the ability of a third-party to have information entered and considered in, or to protest, a patent application pending before the USPTO.

37 CFR 1.290 provides a mechanism for third parties to submit to the USPTO, for consideration and inclusion in the record of a patent application, any patents, published patent applications, or other printed publications of potential relevance to the examination of the application.

A third-party submission under 37 CFR 1.290 may be made in any nonprovisional utility, design, and plant application, as well as in any continuing application. A third-party submission under 37 CFR 1.290 must include a concise description of the asserted relevance of each document submitted, and must be submitted within a certain statutorily specified time period.

37 CFR 1.291 permits a member of the public to file a protest against a pending application. Protests pursuant to 37 CFR 1.291 are supported by a separated statutory provision from third-party submissions under 37 CFR 1.290. As a result, there are several differences between protests and third-party submissions, as explained in the table below.

TABLE 1—COMPARISON OF THIRD-PARTY SUBMISSION AND PROTESTS

Comparison	Third-party submission	Protest
Statute/Regulation	35 U.S.C. 122(e), 37 CFR 1.290	35 U.S.C. 122(c), 37 CFR 1.291.
Content	Printed publications	Printing publications and any facts or information adverse to patentability.
Remarks	Concise description of relevance (limited to a concise description of each document's relevance).	Concise explanation of the relevance (allows for arguments against patentability).
Timing	Prior to Allowance and prior to later of: 6 months after Pre-Grant Publication or first rejection of any claim.	Prior to Allowance and prior to Pre-Grant Publication OR Prior to Allowance and after and after Pre-Grant Publication with application consent.

This information collection covers the items needed to provide the public the means to submit information and protests regarding patent applications to the USPTO. This information collection is necessary so that the public may contribute to the quality of issued patents. The USPTO will use this information, as appropriate, to assist in evaluating the patent application as it moves through the patent examination process.

II. Method of Collection

OMB Control Number: 0651–0062.

Form Number:

- PTO/SB/429 (Third-Party Submission Under 37 CFR 1.290)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector; individuals or households.

Estimated Number of Respondents: 880 per year.

Estimated Number of Responses: 880 per year.

Estimated Time per Response: The USPTO estimates that it takes the public approximately 10 hours to complete this information, depending upon the application. This includes the time to gather the necessary information, prepare and maintain the documents, and submit the items to the USPTO.

Estimated Total Annual Hour Burden: 8,800 hours.

Estimated Total Annual Cost Burden (Hourly): $3,520,000.

TABLE 2—BURDEN HOUR/BURDEN COST TO RESPONDENTS FOR PRIVATE SECTOR

Item No.	Item	Estimated annual respondents	Estimated annual responses (year) (a)	Estimated time for response (hours) (b)	Estimated annual burden (hour/year) (a) × (b) = (c)	Rate [1] ($/hour) (d)	Estimated annual respondent cost burden (c) × (d) = (e)
1	Third-Party Submissions in Nonissued Applications.	800	800	10	8,000	$400	$3,200,000
2	Protests by the Public Against Pending Applications Under 37 CFR 1.291.	19	19	10	190	400	76,000
Total		819	819		8,190		3,276,000

[1] 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); *https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey.* The USPTO uses the mean rate for attorneys in private firms which is $400 per hour.

TABLE 3—BURDEN HOUR/BURDEN COST TO RESPONDENTS FOR INDIVIDUALS OR HOUSEHOLDS

Item No.	Item	Estimated annual respondents	Estimated annual responses (year) (a)	Estimated time for response (hours) (b)	Estimated annual burden (hour/year) (a) × (b) = (c)	Rate [2] ($/hour) (d)	Estimated annual respondent cost burden (c) × (d) = (e)
1	Third-Party Submissions in Nonissued Applications.	60	60	10	600	$400	$240,000

TABLE 3—BURDEN HOUR/BURDEN COST TO RESPONDENTS FOR INDIVIDUALS OR HOUSEHOLDS—Continued

Item No.	Item	Estimated annual respondents	Estimated annual responses (year) (a)	Estimated time for response (hours) (b)	Estimated annual burden (hour/year) (a) × (b) = (c)	Rate [2] ($/hour) (d)	Estimated annual respondent cost burden (c) × (d) = (e)
2	Protests by the Public Against Pending Applications Under 37 CFR 1.291.	1	1	10	10	400	4,000
Total		61	61		610		244,000

[2] 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); *https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey.* The USPTO uses the mean rate for attorneys in private firms which is $400 per hour.

Estimated Total Annual (Non-hour) Respondent Cost Burden: $80,456. This information collection has no capital start-up, maintenance, or operating fees. However, there are postage costs and filing fees. The total non-hour respondent cost burden for this information collection in the form of filing fees ($80,335) and postage costs ($121) is approximately $80,456.

In particular, 37 CFR 1.290 requires payment of the fee set forth in 37 CFR 1.17(o) for every ten documents, or fraction thereof, listed in each third-party submission.

The USPTO provides an exemption from the 1.17(o) fee requirement where a third-party submission listing three or fewer total documents is the first third-party submission submitted in an application by the third-party, or a party in privity with the third-party. The effect of this is that the first three documents submitted by a third-party are exempt from the fee requirement. However, the submission of four or more documents by a third-party triggers the collection of the fee.

There is no fee for filing protests under 37 CFR 1.291 unless the filed protest is the second or subsequent protest by the same real party in interest, in which case the 37 CFR 1.17(i) fee must be included. The USPTO estimates that only 1 out of every 10 protests filed per year will require this fee.

TABLE 4—FILING FEES

Item No.	Item	Estimated annual responses (a)	Filing fee ($) (b)	Total non-hour cost burden ($) (a) × (b) = (c)
1	Third-Party Submissions in Nonissued Applications (undiscounted entities).	390	$180	$70,200
1	Third-Party Submissions in Nonissued Applications (small and micro entities).	110	90	9,900
2	Protests by the Public Against Pending Applications Under 37 CFR 1.291—second or subsequent protest by the same real party in interest (undiscounted entities).	1	130	130
2	Protests by the Public Against Pending Applications Under 37 CFR 1.291—second or subsequent protest by the same real party in interest (small entities).	1	70	70
2	Protests by the Public Against Pending Applications Under 37 CFR 1.291—second or subsequent protest by the same real party in interest (micro entities).	1	35	35
Total				80,335

Although the USPTO prefers that the items in this information collection be submitted electronically, responses may be submitted by mail through the United States Postal Service (USPS). The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be $8.05. The USPTO estimates that 15 submissions may be mailed to the USPTO, for a total postage cost of $121 per year.

Respondent's Obligation: Required to obtain or retain benefits.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information

collection. Before including an address, phone number, email address, or other personal identifying information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2021–09037 Filed 4–29–21; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) previously furnished by such agencies.

DATES: Comments must be received on or before: May 30, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—Product Name(s): MR 1194—Cleaning Cloth, DuraFresh, 2 Pack
Designated Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s): 1095–01–577–1801—Knife, Combat, Tanto Point, Automatic, 3.6'' Blade
Designated Source of Supply: DePaul Industries, Portland, OR
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA LAND AND MARITIME

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s): 8530–00–080–7630—Toothbrush, Child
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
8530–01–293–1388—Toothbrush, Child's (Multituft)
8520–01–303–6438—Toothpaste, 1.4 oz., Non-Fluoride
Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2021–09087 Filed 4–29–21; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* May 30, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 11/27/2020 and 3/5/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service(s) to the Government.

2. The action will result in authorizing small entities to furnish the service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Contractor Operated Civil Engineer Supply Store
Mandatory for: US Air Force, Whiteman AFB, MO
Designated Source of Supply: South Texas Lighthouse for the Blind, Corpus Christi, TX
Contracting Activity: DEPT OF THE AIR FORCE, FA4625 509 CONS CC

One (1) public comment was received in response to the **Federal Register** notice of November 27, 2020 (85 FR 229) regarding the proposed addition to the Procurement List of the requirement to operate a Contractor Operated Civil Engineer Supply Store (COCESS) for the U.S. Air Force at Whiteman AFB, MO. The commenter stated that the proposed service was not suitable for performance under the AbilityOne Program. The

commenter listed tasks that are typically performed by COCESS employees, as well as unusual tasks that may be required, which the commenter says cannot be performed by people who are blind. The commenter stated that the Commission's suitability criteria are not met, because there is potential impact the commenter's firm if the Commission decides to add additional COCESS operations to the Procurement List.

The Commission has carefully considered each of its regulatory suitability criteria and found that they are established through the factual documentation supporting this proposed addition. There is employment potential for individuals who are blind or visually impaired. There is a qualified and capable nonprofit agency to perform the work. The Commission reviewed the specific Statement of Work for this requirement and found it to be very similar to retail operations already performed by the proposed nonprofit agency on similar military installations. The responsible Contracting Activity performed a capability survey and documented its finding that the proposed nonprofit agency is capable of performing this service.

In accordance with the Commission's regulation at 41 CFR 51–2.4(e), the commenter is not considered to be impacted by the proposed action because the commenter is not the current contractor for the requirement. In summary, all regulatory criteria are met and are documented in the administrative record to support the Commission's decision that this work is suitable and is approved for addition to the Procurement List.

Service Type: Administrative and HR Support Service
Mandatory for: Military Sealift Command (MSC), MSC-Norfolk, Norfolk, VA
Designated Source of Supply: VersAbility Resources, Inc., Hampton, VA
Contracting Activity: DEPT OF THE NAVY, MSC NORFOLK

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the expiration of the Department of the Navy, MSC Norfolk, Administrative and HR Support Service, contract. The Federal customer contacted, and has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the Department of the Navy, MSC Norfolk will refer its business elsewhere, this addition must be effective on May 16, 2021, ensuring timely execution for a May 17, 2021, start date while still allowing 16 days for comment. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on March 5, 2021, and did not receive any comments from any interested persons, including from the incumbent contractor. This addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

Deletions

On 3/26/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s): MR 858—Extra Life
Designated Source of Supply: Industries of the Blind, Inc., Greensboro, NC
Contracting Activity: Military Resale-Defense Commissary Agency,

NSN(s)—Product Name(s):
MR 1172—Sweeper Set, Wet and Dry
MR 1174—Refill, Sweeper Set, Dry Cloths, 30 Count
Designated Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):
MR 804—Grill Basket
MR 889—Ergo Garlic Press
Designated Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency

Service(s)

Service Type: Transcription Services
Mandatory for: Equal Employment Office: Federal Bureau of Prisons, Washington, DC
Designated Source of Supply: Lighthouse for the Blind of Houston, Houston, TX
Contracting Activity: FEDERAL PRISON SYSTEM, CENTRAL OFFICE

Service Type: Preservation and Packaging
Mandatory for: New Cumberland Army Depot, New Cumberland, PA
Designated Source of Supply: ForSight Vision, York, PA
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA SUPPORT SERVICES—DSS

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2021–09088 Filed 4–29–21; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Engineers Corps

Proposals by Non-Federal Interests, for Feasibility Studies, Proposed Modifications to Authorized Water Resources Development Projects and Feasibility Studies, and Proposed Modifications for an Environmental Infrastructure Program for Inclusion in the Annual Report to Congress on Future Water Resources Development

AGENCY: U.S. Army Corps of Engineers (USACE), DoD.

ACTION: Notice.

SUMMARY: The Water Resources Reform and Development Act (WRRDA) 2014, as amended, requires the Secretary of the Army annually submit to the Congress a report (Annual Report) that identifies feasibility reports, proposed feasibility studies submitted by non-Federal interests, proposed modifications to authorized water resources development projects or feasibility studies, and proposed modifications to environmental

infrastructure program authorities that meet certain criteria. The Annual Report is to be based, in part, upon requests for proposals submitted by non-Federal interests.

DATES: Proposals must be submitted online by August 30, 2021.

ADDRESSES: Submit proposals online at: *https://www.usace.army.mil/Missions/Civil-Works/Project-Planning/WRRDA-7001-Proposals/.* If a different method of submission is required, use the further information below to arrange an alternative submission process.

FOR FURTHER INFORMATION CONTACT: Send an email to the help desk at *WRRDA7001Proposal@usace.army.mil* or call Stuart McLean, Planning and Policy Division, Headquarters, USACE, Washington, DC at 202–761–4931.

SUPPLEMENTARY INFORMATION: Section 7001 of WRRDA 2014 (33 U.S.C. 2282d), as amended, requires the publication of a notice in the **Federal Register** annually to request proposals by non-Federal interests for feasibility studies, modifications to authorized USACE water resources development projects or feasibility studies, and modifications to environmental infrastructure program authorities. Project feasibility reports that have signed Chief's Reports, but have not been authorized will be included in the Annual Report table by the Secretary of the Army and these proposals do not need to be submitted in response to this notice.

Proposals by non-Federal interests must be entered online and require the following information:

1. The name of the non-Federal interest, or all non-Federal interests in the case of a modification to an environmental infrastructure program authority, including any non-Federal interest that has contributed to or is expected to contribute toward the non-Federal share of the proposed feasibility study, project modification or environmental infrastructure program.

2. State if this proposal is for authorization of a feasibility study, a modification to an authorized USACE water resources development project, a modification to an authorized USACE water resources feasibility study, or a modification to a USACE environmental infrastructure program authority. If a modification of an existing authority, specify the authorized water resources development project, study, or environmental infrastructure program authority that is proposed for modification.

3. State the specific project purpose(s) of the proposed study or modification.

4. Provide an estimate, to the extent practicable, of the total cost, and the Federal and non-Federal share of those costs, of the proposed study and, separately, an estimate of the cost of construction or modification.

5. Describe, to the extent applicable and practicable, an estimate of the anticipated monetary and non-monetary benefits of the proposal with regard to benefits to the protection of human life and property; improvement to transportation; the national, regional, or local economy; the environment; or the national security interests of the United States.

6. Proposals for modifications to environmental infrastructure program authorities must also include a description of assistance provided to date and the total Federal cost of assistance provided to date.

7. State if the non-Federal interest has the financial ability to provide the required cost share, reference Engineer Regulation 1105– 2–100, Planning Guidance Notebook.

8. Describe if local support exists for the proposal.

9. Upload a letter or statement of support for the proposal from each associated non-Federal interest.

All provided information may be included in the Annual Report to Congress on Future Water Resources Development. Therefore, information that is Confidential Business Information, information that should not be disclosed because of statutory restrictions, or other information that a non-Federal interest would not want to appear in the Annual Report should not be included.

Process: Proposals received within the time frame set forth in this notice will be reviewed by the Army and will be presented in one of two tables. The first table will be in the Annual Report itself, and the second table will be in an appendix. To be included in the Annual Report table, the proposals must meet the following five criteria:

1. Are related to the missions and authorities of the USACE; involve a proposed or existing USACE water resources project or effort whose primary purpose is flood and storm damage reduction, commercial navigation, or aquatic ecosystem restoration, municipal or agricultural water supply. Following long-standing USACE practice, related proposals such as for recreation, hydropower, are eligible for inclusion if undertaken in conjunction with such a project or effort.

2. Require specific congressional authorization, including by an Act of Congress:

a. Requires Construction Authorization:

- Feasibility reports that have successfully passed the Tentatively Selected Plan Milestone in the USACE plan formulation process;
- Non-Federal feasibility reports submitted to the Secretary of the Army under Section 203 of WRDA 1986, as amended, under Administration review;
- Proposed modifications to authorized water resources development projects requested by non-Federal interests.
- Note: reports that have signed Chief's Reports, but have not been authorized, will be included in the Annual Report table and these proposals do not need to be submitted in response to this notice.

b. Seeking Study Authorization:

- New feasibility studies proposed by non-Federal interests through the Section 7001 of WRRDA 2014 process will be evaluated by the USACE to determine whether or not there is existing study authority, and
- Proposed modifications to studies requested by non Federal interests through the Section 7001 of WRRDA 2014 process will be evaluated by the USACE to determine whether or not there is existing study authority.

c. The following cases are NOT ELIGIBLE to be included in the Annual Report and will be included in the appendix for transparency:

- Proposals for modifications to non-Federal projects under program authorities where USACE has provided previous technical assistance. Authorization to provide technical assistance does not provide authorization of a water resources development project.
- Proposals for construction of a new water resources development project that is not the subject of a currently authorized USACE project or a complete or ongoing feasibility study.
- Proposals that do not include a request for a potential future water resources development project through completed feasibility reports, proposed feasibility studies, and proposed modifications to authorized projects or studies.

3. Have not been congressionally authorized;

4. Have not been included in the Annual Report table of any previous Annual Report to Congress on Future Water Resources Development; and

- If the proposal was included in the Annual Report table in a previous Report to Congress on Future Water Resources Development, then the proposal is not eligible to be included in the Annual Report table. If a proposal was previously included in an appendix it may be re-submitted.

5. If authorized, could be carried out by the USACE.

• Whether following the USACE Chief's Report process or Section 7001 of WRRDA 2014, a proposal for a project or a project modification would need a current decision document to provide updated information on the scope of the potential project and demonstrate a clear Federal interest. This determination would include an assessment of whether the proposal is:

—Technically sound, economically viable and environmentally acceptable.

—Compliant with environmental and other laws including but not limited to National Environmental Policy Act, Endangered Species Act, Coastal Zone Management Act, and the National Historic Preservation Act.

—Compliant with statutes and regulations related to water resources development including various water resources provisions related to the authorized cost of projects, level of detail, separable elements, fish and wildlife mitigation, project justification, matters to be addressed in planning, and the 1958 Water Supply Act.

Environmental infrastructure proposals are an exception to the criteria. To be included in the table within the Annual Report the proposal must be a modification to a project that was authorized pursuant to Section 219 of WRDA 1992, as amended or must identify a programmatic modification to an environmental infrastructure assistance program and it has not been included in any previous annual report.

Feasibility study proposals submitted by non-Federal interests are for study authorization only. If Congressional authorization of a feasibility study results from inclusion in the Annual Report, it is anticipated that such authorization would be for the study, not for construction. Once a decision document is completed in accordance with Executive Branch policies and procedures, the Secretary will determine whether to recommend the project for authorization.

All USACE water resources development projects must meet certain requirements before proceeding to construction. These requirements include: (1) That the project is authorized for construction by Congress; (2) that the Secretary, or other appropriate official, has approved a current decision document; and, (3) that the funds for project construction have been appropriated and are available.

Section 902 of WRDA 1986, as amended, (33 U.S.C. 2280) establishes a maximum authorized cost for projects (902 limit). A Post Authorization Change Report (PACR) is required to be completed to support potential modifications, updates to project costs, and an increase to the 902 limit. Authority to undertake a 902 study is inherent in the project authority, so no additional authority is required to proceed with the study. Since these PACRs support project modifications, they may be considered for inclusion in the Annual Report if a report's recommendation requires Congressional authorization.

The Secretary shall include in the Annual Report to Congress on Future Water Resources Development a certification stating that each feasibility report, proposed feasibility study, and proposed modification to an authorized water resources development project, feasibility study, or proposed modifications to an environmental infrastructure program authority included in the Annual Report meets the criteria established in Section 7001 of WRRDA 2014, as amended.

Please contact the appropriate district office or use the contact information above for assistance in researching and identifying existing authorizations and existing USACE decision documents. Those proposals that do not meet the criteria will be included in an appendix table included in the Annual Report to Congress on Future Water Resources Development. Proposals in the appendix table will include a description of why those proposals did not meet the criteria.

Jaime A. Pinkham,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2021–09042 Filed 4–29–21; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Virtual Public Meetings for the Draft Environmental Impact Statement for Testing and Training Activities in the Patuxent River Complex

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality, the Department of the Navy (DON) has prepared and filed with the United States Environmental Protection Agency a Draft Environmental Impact Statement (EIS) for Testing and Training Activities in the Patuxent River Complex (PRC), Naval Air Station (NAS) Patuxent River, Maryland. The Draft EIS evaluates the potential environmental effects of continuing to conduct military research, development, test and evaluation (also referred to as ''testing'') and training activities within the PRC. Activities include those analyzed in the December 1998 PRC Final EIS and subsequent environmental assessments, as well as adjustments to current testing and training activities required to support projected DON military readiness requirements into the foreseeable future. This notice announces the public review and comment period and the dates of the virtual public meetings, includes information about how the public can review and comment on the document, and provides supplementary information about the environmental planning effort.

DATES: The 45-day public comment period begins April 30, 2021 and ends June 15, 2021. To be considered in the Final EIS, all comments must be postmarked or received online by 11:59 p.m. Eastern Daylight Time on June 15, 2021. Due to current Federal and State guidance on social distancing and travel and public event restrictions in response to COVID–19, the DON is holding virtual public meetings, consisting of a presentation and question and answer sessions, to discuss the proposed action and the draft environmental analysis. Visit the project website at *www.PRCEIS.com* to learn more about and to view and attend the virtual public meetings. Public meeting materials will be posted on the project website and copies may be obtained by phone at 301–342–9902.

The virtual public meetings will occur as follows:

1. Tuesday, May 18, 2021, from 6 to 7 p.m. Eastern Daylight Time
2. Wednesday, May 19, 2021, from 12 to 1 p.m. Eastern Daylight Time

Substantive questions for discussion with DON representatives at the virtual public meetings can be submitted between May 10 and 17, 2021 for the May 18 and 19, 2021 meetings by completing the form at *www.PRCEIS.com.*

ADDRESSES:

Written comments may be mailed to Naval Air Warfare Center Aircraft Division Range Sustainability Office, Atlantic Ranges and Targets Department, Attention: PRC EIS Project Manager, 23013 Cedar Point Road, Building 2118, Patuxent River, MD 20670–1183, 301–342–9902, or submitted electronically via the project website at *www.PRCEIS.com.* All comments submitted during the 45 -day public comment period will become part of the public record, and

substantive comments will be considered in the Final EIS. Federal, state, and local agencies and officials, and other interested organizations and individuals are encouraged to provide comments on the Draft EIS during the 45-day public comment period.

FOR FURTHER INFORMATION CONTACT: Naval Air Warfare Center Aircraft Division Range Sustainability Office, Atlantic Ranges and Targets Department, Attention: Ms. Crystal Ridgell, PRC EIS Project Manager, 23013 Cedar Point Road, Building 2118, Patuxent River, MD 20670–1183, 301–342–9902, or project website at *www.PRCEIS.com.*

SUPPLEMENTARY INFORMATION: The DON distributed the Draft EIS to federal agencies with which the DON is consulting and to other stakeholders, provided press releases to local newspapers, and distributed letters and postcards to stakeholders, Native American Tribes, and other interested parties. Copies of the Draft EIS are available for public review at the following public libraries:

1. St. Mary's County Library, Lexington Park Branch, 21677 FDR Blvd., Lexington Park, MD 20653–0048
2. St. Mary's County Library, Charlotte Hall Branch, 37600 New Market Rd., Charlotte Hall, MD 20622–3041
3. Calvert Library Southern Branch, 13920 H G Trueman Rd., Solomons, MD 20688–0521
4. Lancaster Community Library, 16 Town Centre Dr., Kilmarnock, VA 22482–3901
5. Northumberland Public Library, 7204 Northumberland Hwy., Heathsville, VA 22473–3326
6. Dorchester County Central Library, 303 Gay St., Cambridge, MD 21613–1812
7. Somerset County Library, Princess Anne Branch, 11767 Beechwood St., Princess Anne, MD 21853–1118

Depending upon COVID–19 conditions regulating access to public facilities, it is recommended to check with the library regarding its hours of operation and the availability of the document. The PRC Draft EIS is also available for electronic viewing or download at *www.PRCEIS.com.* A compact disc of the Draft EIS will be made available upon request by contacting 301–342–9902.

Dated: April 23, 2021.

K.R. Callan,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2021–08896 Filed 4–29–21; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0022]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; National Study to Inform the 21st Century Community Learning Centers (CCLC) Program

AGENCY: Institute of Educational Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before June 1, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Erica Johnson, 202–245–7676.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Study to Inform the 21st Century Community Learning Centers (CCLC) Program.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 1,228.

Total Estimated Number of Annual Burden Hours: 397.

Abstract: The 21st CCLC program funds services during non-school hours, primarily during the school year. The services aim to help students meet state academic standards, particularly for students in low-performing schools that serve high concentrations of low-income families. Most participants (71 percent) are students attending afterschool centers during the school year, with the remainder being family members (14 percent) or summer attendees (15 percent). Afterschool centers supported by program funds provide a broad range of activities and services, such as academic enrichment, physical activity, service learning, and activities to engage families. Program activities and services may play a crucial role in addressing the substantial learning loss and other challenges that have occurred as a result of the COVID–19 pandemic.

This study will have two components. The first is a national snapshot of strategies that afterschool centers in the 21st CCLC program use to serve their students and families. The national snapshot will complement and extend information from the program's annual performance measures by providing an in-depth understanding of the key outcomes centers aim to promote and the diverse ways their activities and services for students and families, supports for staff, and improvement strategies are designed to promote these outcomes. Describing these strategies can provide insights into ways that centers seek to address longer-term challenges, such as learning loss and trauma, stemming from the pandemic. The second component is an evaluation of a continuous quality improvement system implemented in the program's afterschool centers. The evaluation will examine the implementation and effectiveness of a system focused on improving staff practices that promote students' social and emotional skills. Promoting these skills may be particularly important to compensate for

the effects of the pandemic, in light of evidence that remote learning has negatively affected students' social and emotional well-being.

This package only requests clearance for data collection activities that will occur before March 2022 and impose burden on respondents. These activities, all part of the evaluation of a continuous quality improvement system (the study's second component), involve collecting parent/guardian questionnaires and permission forms, afterschool center coaching logs, and student afterschool attendance records.

Dated: April 27, 2021.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–09085 Filed 4–29–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0016]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Privacy Act Request Form

AGENCY: Office of Management (OM), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before June 1, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elise Cook, 202–401–3769.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Privacy Act Request Form.

OMB Control Number: 1880–0546.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 130.

Total Estimated Number of Annual Burden Hours: 65.

Abstract: The collection is necessary under 5 U.S.C. Section 552a(b) to collect information from individuals requesting information under the Privacy Act (PA). The Department will use the information to provide documents that are responsive to a Privacy Act or FOIA/Privacy Act request under the Freedom of Information Act.

Dated: April 27, 2021.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–09068 Filed 4–29–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0055]

Agency Information Collection Activities; Comment Request; Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Match Waiver Request Form

Correction

In notice document 2021–06935 appearing on pages 17373 through 17374 in the issue of Friday, April 2, 2021, make the following correction:

On page 17373, in the third column, in the ninth and tenth lines down, change ''April 8, 2021'' to read ''June 1, 2021.''

[FR Doc. C1–2021–06935 Filed 4–29–21; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF EDUCATION

Applications for New Awards; Hispanic-Serving Institutions STEM and Articulation 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 new awards for fiscal year (FY) 2021 for the Hispanic-Serving Institutions (HSI) STEM and Articulation Program, Assistance Listing Number 84.031C. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: April 30, 2021.

Deadline for Transmittal of Applications: June 14, 2021.

Deadline for Intergovernmental Review: August 13, 2021.

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 February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Jymece Seward, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B159, Washington, DC 20202–4260. Telephone: (202) 453–6138. Email: *jymece.seward@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The HSI STEM and Articulation Program supports eligible HSIs (as defined in section 502 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1101a)) in developing and carrying out activities described in section 503(b) of the HEA (20 U.S.C. 1101b (b)) to increase the number of Hispanic and low-income students attaining degrees in the fields of science, technology, engineering, and math (STEM); and to develop model transfer and articulation agreements between two-year HSIs and four-year institutions in such fields.

Background: Given the growth in the Hispanic population, taking steps to increase the number of Hispanic students with STEM credentials is critical to the future workforce and economy of the United States. The number of Hispanic students graduating with a postsecondary degree has increased in recent years; however, these students continue to be significantly underrepresented in the total number of students earning STEM credentials.

The Department has promoted college retention, affordability, and completion, especially for students of color and low-income students through various policy initiatives. This competition specifically acknowledges the importance of student-centered programs that will increase the number of Hispanic and low-income students who graduate with degrees in STEM fields, as well as the need to promote support systems to ensure that community college students will continue to pursue STEM degrees once enrolled at a four-year institution.

HSIs interested in applying to this grant program should examine the alignment of their mission and current strategic plan with the needs of the target population and surrounding community to develop, enhance, and implement practice and policies that best promote student success, specifically for Hispanic and low-income students.

Priorities: This notice contains one absolute priority, two competitive preference priorities, and one invitational priority. The absolute priority is from section 371(b)(2)(B) of the HEA. Competitive Preference Priority 1 is from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities). Competitive Preference Priority 2 is from section 503(b)(5) of the HEA.

Absolute Priority: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Projects designed to increase the number of Hispanic and other low-income students attaining degrees in the fields of science, technology, engineering, or mathematics; and to develop model transfer and articulation agreements between 2-year Hispanic-serving institutions and 4-year institutions in such fields.

Competitive Preference Priorities: For FY 2021 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 an application up to 10 additional points (up to 5 points under each priority), depending on how well the application meets the priorities.

These priorities are:

Competitive Preference Priority 1—Fostering Flexible and Affordable Paths to Obtaining Knowledge and Skills (up to 5 additional points).

Projects that are designed to address one or more of the following priority areas:

(a) Improving collaboration between education providers and employers to ensure student learning objectives are aligned with the skills or knowledge required for employment in in-demand industry sectors or occupations (as defined in section 3(23) of the Workforce Innovation and Opportunity Act of 2014).

(b) Providing work-based learning experiences (such as internships, apprenticeships, and fellowships) that align with in-demand industry sectors or occupations (as defined in section 3(23) of the Workforce Innovation and Opportunity Act of 2014).

Competitive Preference Priority 2—Academic Achievement and Retention Strategies (up to 5 additional points).

Projects designed to develop or enhance tutoring, counseling, and student service programs designed to improve academic success, including innovative and customized instruction courses (which may include remedial education and English language instruction) designed to help retain students and move the students rapidly into core courses and through program completion.

Under this competition we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Providing Student Supports for Addressing the Impact of COVID–19 on Students' Mental Health and Academic Outcomes.

Background: Recent data suggests that the COVID–19 pandemic has created academic challenges and greatly exacerbated mental health issues among students. For example, in a recent survey conducted by the Centers for Disease Control and Prevention, 63 percent of 18- to 24-year-olds reported symptoms of anxiety or depression.[1] In addition, the transition to remote learning has introduced academic challenges for all students, particularly students from low-income backgrounds and students of color, English learners, and students with disabilities. For students living in rural communities, access to instruction and other challenges brought on by the pandemic has negatively impacted students' well-being.[2] This invitational priority is intended to address how to address existing and future challenges as a result of the COVID–19 pandemic.

Priority:

Projects that will provide integrated student support services (also known as wrap-around services) for HSI STEM students to address mental health and academic support due to the COVID–19 pandemic. An applicant should describe in its application how it will collaborate to provide resources that will leverage grant funding to drive resources to support students and communities hit the hardest by COVID–19 and drive evidence-based best practices to address the existing inequities exacerbated by the pandemic. Integrated services meet the whole needs of students from low-income backgrounds and their families, including public benefits, aid for school supplies, transportation costs, mental health services, mentoring, tutoring, and peer support groups, that ensure successful articulation from two-year to

[1] *https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6932a1-H.pdf.*

[2] https://www.pnas.org/content/118/1/2019378118; *https://www.gse.harvard.edu/news/20/10/harvard-edcast-covid-19s-impact-rural-schools.*

four-year academic programs and successful graduation with a credential.

Definitions: The following definitions are from 34 CFR 77.1.

Baseline means the starting point from which performance is measured and targets are set.

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 promising evidence or 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.

Logic model (also referred to as a 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 Pacific Education Laboratory's Logic Model Application (*www.ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp*).

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 outcomes(s) the key project component is designed to improve, consistent with the specific goals of the program.

What Works Clearinghouse 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.

Program Authority: 20 U.S.C.1067q(b)(2)(B).

Although the HSI STEM and Articulation Program authorized under section 371 of the HEA is not part of the Developing HSIs Program authorized by title V of the HEA, the eligibility and activity provisions under the Developing HSIs Program apply to the HSI STEM and Articulation Program pursuant to section 371(a)(2) and (b)(2)(B) of the HEA.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Non procurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $94,100,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent fiscal years from the list of unfunded applications from this competition.

Estimated Range of Awards: $700,000-$1,000,000.

Estimated Average Size of Awards: $775,000.

Estimated Number of Awards: 96.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* (a)IHEs that qualify as eligible HSIs are eligible to apply for new grants under the HSI STEM and Articulation Program. To be an eligible HSI, an IHE must—

(i) Have an enrollment of needy students, as defined in section 502(b) of the HEA (section 502(a)(2)(A)(i) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(i));

(ii) Have, except as provided in section 522(b) of the HEA, average education and general expenditures that are low, per full-time equivalent (FTE) undergraduate student, in comparison with the average education and general expenditures per FTE undergraduate student of institutions that offer similar instruction (section 502(a)(2)(A)(ii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(ii));

Note: To demonstrate an enrollment of needy students and low average education and general expenditures per FTE undergraduate student, an IHE must be designated as an ''eligible institution'' in accordance with 34 CFR 606.3 through 606.5 and the notice inviting applications for designation as an eligible institution for the fiscal year for which the grant competition is being conducted.

Note: The notice announcing the FY 2021 process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on March 3, 2021 (86 FR 12665). A notice extending the deadline was published in the **Federal Register** on April 13, 2021 (86 FR 19231). Only institutions that the Department determines are eligible, or are granted a waiver, may apply for a grant in this program.

(iii) Be accredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered, or making reasonable progress toward accreditation, according to such an agency or association (section 502(a)(2)(A)(iv) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iv));

(iv) Be legally authorized to provide, and provides within the State, an education program for which the institution awards a bachelor's degree (section 502(a)(2)(A)(iii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iii)), or be a junior or community college (section 502(a)(2)(A)(iii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iii));

(v) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application (section 502(a)(5)(B) of the HEA; 20 U.S.C. 1101a(a)(5)(B));

Note: For this program, the ''end of the award year immediately preceding the date of application'' refers to the end of the fiscal year prior to the application due date. For purposes of this competition, the data that we will use to determine percent enrollment of undergraduate FTE of Hispanic students is from academic year 2019–2020.

(b) An eligible HSI may only submit one grant application in the lead role.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match or exceed those grant funds with non-Federal funds (section 503(c)(2) of the HEA; 20 U.S.C. 1101b(c)(2)).

b. *Indirect Cost Rate Information:* This program uses a restricted 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 described in its application—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 February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR–2019–02–13/pdf/2019–02206.pdf,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the HSI STEM and Articulation Program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

An applicant may wish to request confidentiality of business information because successful applications may be made available to the public, if requested.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *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.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 55 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 any response to the competitive preference priorities, if applicable. However, the recommended 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 Programs form (ED 524); the assurances and certifications; or the one-page project abstract and supporting budget narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. We will award up to 110 points to an application under the selection criteria; the total possible points for each selection criterion are noted in parentheses.

(a) *Quality of the Project Design.* (Maximum 30 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 design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (Up to 15 points)

(2) The extent to which the proposed project represents an exceptional approach to the priority established for the competition. (Up to 5 points)

(3) The extent to which the proposed project demonstrates a rationale (as defined in this notice). (Up to 5 points)

(4) The extent to which the proposed project is supported by promising evidence (as defined in this notice). (Up to 5 points)

Note: Applicants may address the ''demonstrates a rationale'' selection factor through use of a logic model (as defined in this notice). To address the ''promising evidence'' selection factor, applicants should cite the study or studies used to address ''promising evidence'' and attach them as part of the application attachments. In addressing ''promising evidence,'' applicants are encouraged to align the direct student services proposed in this application to evidence-based practices identified in the selected study or studies.

(b) *Quality of Project Services.* (Maximum 30 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 following factors:

(1) 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, national origin, gender, age, or disability. (Up to 10 points)

(2) The extent to which services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (Up to 10 points)

(3) The likely impact of the services to be provided by the proposed project on the intended recipients of those services. (Up to 10 points)

(c) *Significance.* (Maximum 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 5 points)

(2) The likelihood that the proposed project will result in system change or improvement. (Up to 15 points)

(d) *Quality of the Management Plan.* (Maximum 10 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, 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) The extent to which the time commitments of the project director and principal investigator and other key personnel are appropriate and adequate to meet the objectives of the proposed project. (Up to 5 points)

(e) *Quality of the Project Evaluation.* (Maximum 20 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 goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (Up to 5 points)

(2) 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 5 points)

(3) The extent to which the methods of evaluation will, if well-implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards with reservations. (Up to 10 points)

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. Awards will be made in rank order according to the average score received from the peer review.

Tiebreaker. 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 will use other information to select applications (34 CFR 75.217). The Department will apply the following procedure to determine which application or applications will receive an award:

First Tiebreaker: The first tiebreaker will be the highest average score for the selection criterion ''Quality of the Project Design.'' If a tie remains, the second tiebreaker will be utilized.

Second Tiebreaker: The second tiebreaker will be the highest average score for the selection criterion ''Quality of Project Services.'' If a tie remains, the third tiebreaker will be utilized.

Third Tiebreaker: The third tiebreaker will be the highest average score for the selection criterion ''Quality of the Project Evaluation.''

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program, 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.

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 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 *www.ed.gov/fund/grant/apply/appforms/appforms.html.* (c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case, the Secretary establishes a data collection period.

5. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the HSI STEM and Articulation Program:

a. The percentage change, over the five-year grant period, of the number of Hispanic and low-income full-time STEM field degree-seeking undergraduate students enrolled.

b. The number and percent of Hispanic and low-income first-time, full-time STEM field degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year who remain in a STEM field degree/credential program.

c. The number and percentage of Hispanic and low-income first-time, full-time degree-seeking undergraduate students enrolled at four-year HSIs graduating within six years of enrollment with a STEM field degree.

d. The number and percentage of Hispanic and low-income first-time, full-time degree-seeking undergraduate students enrolled at two-year HSIs graduating within three years of enrollment with a STEM field degree/credential.

e. The number and percentage of Hispanic and low-income students transferring successfully to a four-year institution from a two-year institution and retained in a STEM field major.

f. The number of Hispanic and low-income students participating in grant-funded student support programs or services.

g. The number of Hispanic and low-income students who participated in grant-supported services or programs in good academic standing.

h. The number of Hispanic and low-income STEM field major transfer students on track to complete a STEM field degree within three years from their transfer date.

i. The number of Hispanic and low-income students who participated in grant-supported services or programs and completed a degree or credential.

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, 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: 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, or 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 documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Michelle Asha Cooper,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2021–09079 Filed 4–29–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2960–012; ER10–1595–015; ER10–1598–015; ER10–1616–015; ER10–1618–015; ER18–1821–007; ER18–2418 004; ER19–2231–004; ER19–2232–004.

Applicants: Astoria Generating Company, L.P., Chief Conemaugh Power, LLC, Chief Conemaugh Power II, LLC, Chief Keystone Power, LLC, Chief Keystone Power II, LLC, Crete Energy Venture, LLC, Great River Hydro, LLC, Lincoln Generating Facility, LLC, New Covert Generating Company, LLC, Walleye Power, LLC, Rolling Hills Generating, L.L.C.

Description: Amendment to June 30, 2020 and March 1, 2021 Triennial Market Power Analysis for the Northeast Region and Notice of Change in Status of Astoria Generating Company, L.P., et al.

Filed Date: 4/22/21.

Accession Number: 20210422–5251.

Comments Due: 5 p.m. ET 5/13/21,

Docket Numbers: ER20–1697–001.

Applicants: Midcontinent Independent System Operator, Inc., American Electric Power Service Corporation.

Description: Compliance filing: 2021–04–23_AEP Deficiency Response re Order 864 Compliance to be effective N/A.

Filed Date: 4/23/21.

Accession Number: 20210423–5093.

Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER20–1886–001.

Applicants: PJM Interconnection, L.L.C., Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, American Electric Power Service Corporation.

Description: Compliance filing: AEP submits Response to Deficiency Letter in ER20–1886 and ER20–1888 to be effective N/A.

Filed Date: 4/23/21.

Accession Number: 20210423–5016.

Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER20–1888–001.

Applicants: PJM Interconnection, L.L.C., AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., American Electric Power Service Corporation, AEP West Virginia Transmission Company.

Description: Compliance filing: AEP submits Response to Deficiency Letter in ER20–1886 and ER20–1888 to be effective N/A.

Filed Date: 4/23/21.

Accession Number: 20210423–5025.

Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER20–2574–001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Deficiency Response in ER20–2574—AEP West Op Cos Order No. 864 Comp. Filing to be effective N/A.

Filed Date: 4/23/21.

Accession Number: 20210423–5062.

Comments Due: 5 p.m. ET 5/14/21

Docket Numbers: ER20–2577–001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Deficiency Response in ER20–2577—AEP West Trans Cos Order No. 864 Comp. Filing to be effective N/A.

Filed Date: 4/23/21.

Accession Number: 20210423–5057.

Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1726–000.

Applicants: Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, Pascoag Utility District, Vermont Department of Public Service.

Description: Joint Petition for Advance Waiver, et al. of Connecticut Municipal Electric Energy Cooperative, et al.

Filed Date: 4/21/21.

Accession Number: 20210421–5206.

Comments Due: 5 p.m. ET 5/5/21.

Docket Numbers: ER21–1736–000.

Applicants: El Paso Electric Company.

Description: § 205(d) Rate Filing: Service Agreement No. 352, Simultaneous Exchange with TransAlta to be effective 6/11/2021.

Filed Date: 4/22/21.

Accession Number: 20210422–5195.

Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER21–1737–000.

Applicants: Indianapolis Power & Light Company.

Description: § 205(d) Rate Filing: IPL Reactive Power Supplemental Filing and Motions to be effective 6/9/2021.

Filed Date: 4/22/21.

Accession Number: 20210422–5201.

Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER21–1739–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Appaloosa Run Wind Interconnection Agreement to be effective 4/12/2021.

Filed Date: 4/23/21.

Accession Number: 20210423–5008.

Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1740–000.

Applicants: The Connecticut Light and Power Company.

Description: Tariff Cancellation: Cancellation Preliminary Engineering and Design Agreement—Gravel Pit Solar LLC to be effective 4/23/2021.

Filed Date: 4/23/21.

Accession Number: 20210423–5022.

Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1741–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3095R3 Missouri River Energy Services NITSA and NOA to be effective 10/1/2020.

Filed Date: 4/23/21.

Accession Number: 20210423–5024.

Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1742–000.

Applicants: Tampa Electric Company.

Description: Request for Waiver of Rate Schedule Provisions, et al. of Tampa Electric Company.

Filed Date: 4/22/21.

Accession Number: 20210422–5252.

Comments Due: 5 p.m. ET 5/3/21.

Docket Numbers: ER21–1743–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2562R9 Kansas Municipal Energy Agency NITSA and NOA to be effective 4/1/2021.

Filed Date: 4/23/21.

Accession Number: 20210423–5067.

Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1744–000.
Applicants: Brookfield Energy Marketing LP.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status and Change in Category Seller Status to be effective 4/24/2021.
Filed Date: 4/23/21.
Accession Number: 20210423–5165.
Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1745–000.
Applicants: Brookfield Energy Marketing Inc.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status and Change in Category Seller Status to be effective 4/24/2021.
Filed Date: 4/23/21.
Accession Number: 20210423–5166.
Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1746–000.
Applicants: Brookfield Renewable Energy Marketing US LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status and Change in Category Seller Status to be effective 4/24/2021.
Filed Date: 4/23/21.
Accession Number: 20210423–5167.
Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1747–000.
Applicants: Brookfield Renewable Trading and Marketing LP.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status and Change in Category Seller Status to be effective 4/24/2021.
Filed Date: 4/23/21.
Accession Number: 20210423–5169.
Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1748–000.
Applicants: Horseshoe Bend Wind, LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status and Change in Category Seller Status to be effective 4/24/2021.
Filed Date: 4/23/21.
Accession Number: 20210423–5170.
Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1749–000.
Applicants: North Hurlburt Wind, LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status and Change in Category Seller Status to be effective 4/24/2021.
Filed Date: 4/23/21.
Accession Number: 20210423–5172.
Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1750–000.
Applicants: South Hurlburt Wind, LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status and Change in Category Seller Status to be effective 4/24/2021.
Filed Date: 4/23/21.
Accession Number: 20210423–5173.
Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1751–000.
Applicants: Sirrius Energy LLC.
Description: Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 5/1/2021.
Filed Date: 4/23/21.
Accession Number: 20210423–5178.
Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1752–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) Rate Filing: Unexecuted Revisions to Service Agreement No. 398 to be effective 4/23/2021.
Filed Date: 4/23/21.
Accession Number: 20210423–5179.
Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1753–000.
Applicants: California Independent System Operator Corporation
Description: § 205(d) Rate Filing: 2021–04–23 Certificate of Concurrence—LGIA—Kramer to be effective 4/18/2021.
Filed Date: 4/23/21.
Accession Number: 20210423–5198.
Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1754–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205: NYISO-Ravenswood Fuel Oil Implementation Agreement, SA No. 2623 to be effective 5/1/2021.
Filed Date: 4/23/21.
Accession Number: 20210423–5202.
Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–1755–000.
Applicants: Hartree Partners, LP.
Description: § 205(d) Rate Filing: Market-Based Rate Notice of Change in Status, Seller Category, Confidentiality to be effective 4/23/2021.
Filed Date: 4/23/21.
Accession Number: 20210423–5217.
Comments Due: 5 p.m. ET 5/14/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–38–000.
Applicants: International Transmission Company.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities for International Transmission Company.
Filed Date: 4/23/21.
Accession Number: 20210423–5042.
Comments Due: 5 p.m. ET 5/14/21.
Docket Numbers: ES21–39–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities for Michigan Electric Transmission Company, LLC.
Filed Date: 4/23/21.
Accession Number: 20210423–5049.
Comments Due: 5 p.m. ET 5/14/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 23, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–09056 Filed 4–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–130–000.
Applicants: Irish Creek Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Irish Creek Wind, LLC.
Filed Date: 4/26/21.
Accession Number: 20210426–5025.
Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: EG21–131–000.
Applicants: Heartland Divide Wind II, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Heartland Divide Wind II, LLC.
Filed Date: 4/26/21.
Accession Number: 20210426–5027.
Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: EG21–132–000.
Applicants: Little Blue Wind Project, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Little Blue Wind Project, LLC.

Filed Date: 4/26/21.

Accession Number: 20210426–5028.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: EG21–133–000.

Applicants: Sac County Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Sac County Wind, LLC.

Filed Date: 4/26/21.

Accession Number: 20210426–5029.

Comments Due: 5 p.m. ET 5/17/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2566–011; ER10–1333–015; ER13–2322–007; ER13–2387–008; ER15–190–014; ER18–1343–007; ER19–1819–002; ER19–1820–002; ER19–1821–002.

Applicants: Duke Energy Carolinas, LLC, Duke Energy Commercial Enterprises, Inc., Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Renewable Services, LLC, Broad River Solar, LLC, Stony Knoll Solar, LLC, Speedway Solar NC, LLC, Carolina Solar Power, LLC.

Description: Supplement to June 29, 2020 Triennial Updated Market Power Analysis for the Southeast Region of Duke Southeast MBR Sellers.

Filed Date: 4/22/21.

Accession Number: 20210422–5192.

Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER18–1150–005.

Applicants: Northwest Ohio Wind, LLC.

Description: Notice of Non-Material Change in Status of Northwest Ohio Wind, LLC.

Filed Date: 4/23/21.

Accession Number: 20210423–5303.

Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER20–2125–000.

Applicants: WGP Redwood Holdings, LLC.

Description: Supplement to the June 22, 2020 WGP Redwood Holdings, LLC tariff filing.

Filed Date: 4/23/21.

Accession Number: 20210423–5336.

Comments Due: 5 p.m. ET 5/14/21.

Docket Numbers: ER21–573–002.

Applicants: Chalk Point Power, LLC.

Description: Tariff Amendment: Response to Request for Additional Information and Update to Effective Date to be effective 4/27/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5135.

Comments Due: 5 p.m. ET 5/6/21.

Docket Numbers: ER21–574–002.

Applicants: Dickerson Power, LLC.

Description: Tariff Amendment: Response to Request for Additional Information and Update to Effective Date to be effective 4/27/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5136.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–575–002.

Applicants: Lanyard Power Marketing, LLC.

Description: Tariff Amendment: Response to Request for Additional Information and Update to Effective Date to be effective 4/27/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5137.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–577–002.

Applicants: Morgantown Power, LLC.

Description: Tariff Amendment: Response to Request for Additional Information and Update to Effective Date to be effective 4/27/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5138.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–578–002.

Applicants: Morgantown Station, LLC.

Description: Tariff Amendment: Response to Request for Additional Information and Update to Effective Date to be effective 4/27/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5141.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–1756–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Service Agreement No. 892 to be effective 4/15/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5069.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–1757–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Service Agreement No. 893 to be effective 4/15/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5064.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–1758–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, SA No. 6026; Queue No. NQ122 to be effective 4/7/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5082.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–1759–000.

Applicants: Westlands Transmission, LLC.

Description: § 205(d) Rate Filing: Second Amended Rate Schedule FERC No. 1 and Agreement to Supplement to be effective 4/27/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5124.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–1761–000.

Applicants: American Electric Power Service Corporation, Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AEP submits Three FAs re: ILDSA SA No. 1336 to be effective 6/26/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5126.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–1762–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Hale South Solar LGIA Filing to be effective 4/12/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5151.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–1763–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, SA No. 6020; Queue No. AG1–141 to be effective 4/1/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5186.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–1764–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original IISA, Service Agreement No. 6014; Queue No. AE2–297 to be effective 3/29/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5189.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–1765–000.

Applicants: Cleveland Cliffs Electric Supply LLC.

Description: Baseline eTariff Filing: baseline new to be effective 4/26/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5207.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–1766–000.

Applicants: ISO New England Inc.

Description: § 205(d) Rate Filing: ISO New England Inc.; Ministerial Filing to True Up Section III.13.1 to be effective 9/25/2018.

Filed Date: 4/26/21.

Accession Number: 20210426–5212.

Comments Due: 5 p.m. ET 5/17/21.

Docket Numbers: ER21–1767–000.

Applicants: Tampa Electric Company.

Description: § 205(d) Rate Filing: Updated Real Power Loss Factor—2021 to be effective 5/1/2021.

Filed Date: 4/26/21.

Accession Number: 20210426–5213.

Comments Due: 5 p.m. ET 5/17/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 26, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–09059 Filed 4–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4113–066]

Oswego Hydro Partners, LP; Notice of Intent to File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 4113–066.

c. *Date Filed:* February 26, 2021

d. *Submitted By:* Oswego Hydro Partners, LP (Oswego Hydro)

e. *Name of Project:* Phoenix Hydroelectric Project

f. *Location:* On the Oswego River in the counties of Onondaga and Oswego, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations

h. Potential Applicant Contact: Jody J. Smet, AICP, Vice President Regulatory Affairs, Eagle Creek Renewable Energy, at (920) 293–4628, or email at *Jody.Smet@eaglecreekre.com;* or Matthew J. Nini, Licensing and Compliance Manager, Eagle Creek Renewable Energy, at (973) 998–8171, or email at *Matthew.Nini@eaglecreekre.com.*

i. *FERC Contact:* Samantha Pollak at (202) 502–6419; or email at *samantha.pollak@ferc.gov.*

j. Oswego Hydro filed its request to use the Traditional Licensing Process on February 26, 2021. Oswego Hydro provided public notice of its request on February 18, 2021. In a letter dated April 26, 2021, the Director of the Division of Hydropower Licensing approved the applicant's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and National Marines Fisheries Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402. We are also initiating consultation with the New York State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Oswego Hydro as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. The applicant filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (*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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208 3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 4113. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2024.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: April 26, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–09055 Filed 4–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–1751–000]

Sirrius Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sirrius Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 17, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 26, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–09054 Filed 4–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC21–102–000]

Empire Pipeline, Inc.; Notice of Petition for Waiver

Take notice that on April 19, 2021, Black Hills Corporation (Petitioner), filed a petition for waiver of the Federal Energy Regulatory Commission's (Commission) requirement to provide its certified public accountant (CPA) certification statement for the 2019 FERC Form No. 2–A, as more fully explained in the petition.

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. Anyone filing a motion to intervene, or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of 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.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on May 26, 2021.

Dated: April 26, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–09053 Filed 4–29–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21–744–000.

Applicants: Eastern Shore Natural Gas Company.

Description: § 4(d) Rate Filing: State Route 72 DCRC Non-Conforming & Negotiated Rate to be effective 4/26/2021.

Filed Date: 4/22/21.

Accession Number: 20210422–5017.

Comments Due: 5 p.m. ET 5/4/21.

Docket Numbers: RP21–745–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C..

Description: § 4(d) Rate Filing: Volume No. 2—Macquarie Energy, LLC SP365448 to be effective 5/1/2021.

Filed Date: 4/22/21.

Accession Number: 20210422–5045.

Comments Due: 5 p.m. ET 5/4/21.

Docket Numbers: RP21–746–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits request for a 3-month extension of time, or until 06/30/2021, to submit the annual fuel filing under RP21–746.

Filed Date: 4/22/21.

Accession Number: 20210422–5186.

Comments Due: 5 p.m. ET 5/4/21.

Docket Numbers: RP19–1353–012.

Applicants: Northern Natural Gas Company.

Description: Compliance filing 20210423 Form 2 Calculated Factor and Maintenance Capital Spending Report.

Filed Date: 4/23/21.

Accession Number: 20210423–5047.

Comments Due: 5 p.m. ET 5/5/21.

Docket Numbers: RP21–747–000.

Applicants: Infinite Energy, LLC, Gas South, LLC.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Infinite Energy, LLC, et al. under RP21–747.

Filed Date: 4/23/21.

Accession Number: 20210423–5160.

Comments Due: 5 p.m. ET 4/30/21.

Docket Numbers: RP21–748–000.

Applicants: Dominion Energy Overthrust Pipeline, LLC.

Description: § 4(d) Rate Filing: Statement of Negotiated Rates Version 12.0.0 to be effective 5/24/2021.

Filed Date: 4/23/21.

Accession Number: 20210423–5188.

Comments Due: 5 p.m. ET 5/5/21.

Docket Numbers: RP21–749–000.

Applicants: Dominion Energy Questar Pipeline, LLC.

Description: § 4(d) Rate Filing: Statement of Negotiated Rates Version 18.0.0 to be effective 5/24/2021.

Filed Date: 4/23/21.

Accession Number: 20210423–5193.

Comments Due: 5 p.m. ET 5/5/21.

Docket Numbers: RP21–750–000.

Applicants: Florida Southeast Connection, LLC.

Description: Annual System Balancing Adjustment Filing of Florida Southeast Connection, LLC under RP21–750..

Filed Date: 4/23/21.

Accession Number: 20210423–5250.
Comments Due: 5 p.m. ET 5/5/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 26, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–09060 Filed 4–29–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OMS–2020–0454; FRL—10023–26–OMS]

Proposed Information Collection Request; Comment Request; Public Health Emergency Workplace Response System (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), Public Health Emergency Workplace Response System (EPA ICR Number 2676.02, OMB Control Number 2030–0049) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through June 30, 2021. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 29, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OMS–2020–0454, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Daniel Coogan, Office of Resource and Business Operations, Office of Mission Support, Environmental Protection Agency; telephone number: 202–564–1862; email address: *coogan.daniel@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Because of the substantial risk to life, safety, or health of the workforce and the public, EPA requests an emergency approval to collect the necessary information from Federal employees, detailees, interns, volunteers, grantee recipients and contractors that perform work in EPA facilities to implement an effective COVID–19 Contact Tracing program.

Each item of information requested is based on CDC and industry best practice for Contact Tracing. This information is necessary to identify individuals in the workforce who are COVID- 19 positive and to notify and trace persons in the workforce who were in close contact with the COVID–19 positive employee. Including contractors, interns, grantees, and volunteers, enables EPA to capture the total workforce and take appropriate action.

The following information will be collected for COVID Contact Testing:

—Name;

—Work location;

—Contact information;

—Supervisor;

—Health status;

—Close contacts (as defined by CDC) when in the office; and

—Building and floors visited during period of possible transmission (as defined by CDC).

Form Numbers: None.

Respondents/affected entities: EPA's Contract Tracing Program participants, including detailees, interns, volunteers, grantee recipients and contractors.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 250 (total).

Frequency of response: Once.

Total estimated burden: 63 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $0 (per year), which includes annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

Daniel Coogan,

Director, Office of Resource and Business Operations.

[FR Doc. 2021–09015 Filed 4–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0415; FRL–10023–32–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Implementation of the 8-Hour National Ambient Air Quality Standards for Ozone (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Implementation of the 8-hour National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements (EPA ICR Number 2347.04, OMB Control No. 2060–0695), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This renewal provides updated burden estimates for the 2021–2024 time period for implementing the 2008 ozone National Ambient Air Quality Standards (NAAQS), and it provides new burden estimates for the information collection resulting from implementation of the 2015 ozone NAAQS. It also provides new burden estimates for the information collection resulting from ongoing implementation of the revoked 1997 ozone NAAQS. Public comments were previously requested via the **Federal Register** on December 8, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 1, 2021.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OAR–2020–0415, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Stackhouse, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–5208 or by email at *stackhouse.butch@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *http://www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Currently, the EPA has an existing OMB-approved ICR that estimates the burden on states for implementation-related activities associated with the 2008 ozone NAAQS for the period February 2018 to April 2021. States with nonattainment areas for the 2008 ozone NAAQS are implementing the NAAQS pursuant to the CAA and implementation regulations issued for that NAAQS. This proposed ICR renewal estimates the burden for states to meet the ongoing planning requirements that apply to their remaining nonattainment areas for the 2008 ozone NAAQS over the period April 2021 to April 2024. In addition, this ICR renewal includes a new burden estimate for state and EPA activities related to implementing the 2015 8-hour ozone standard, promulgated on October 1, 2015. Finally, this ICR renewal estimates a small amount of additional burden to states to meet the anti-backsliding requirements for the revoked 1997 ozone NAAQS.

Form Numbers: None.

Respondents/affected entities: State and local governments.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 31.

Frequency of response: Once per triggering event [*e.g.,* an air agency is required to develop and submit a SIP revision when the area is designated nonattainment or reclassified to a higher classification, or if it is in an OTR member state. An air agency is also required to submit a second 10-year maintenance plan for maintenance areas or portions of maintenance areas for the 1997 ozone NAAQS not also designated as nonattainment for the 2008 ozone NAAQS, and for maintenance areas for the 2008 ozone NAAQS].

Total estimated burden: 119,133 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $8.4M (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: This is an increase of 85,133 in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to the activities expected to occur during this renewal period, which are similar but not identical to the SIP planning and submission activities in the previous ICR period. The main factors contributing to the change include: (1) The addition of the new burden associated with the requirements for 2015 ozone NAAQS nonattainment areas and OTR states and 1997 ozone NAAQS maintenance areas, which was not covered by the prior ICR; (2) the reduction in the number of 2008 ozone NAAQS nonattainment areas due to states' relative success in attaining the 2008 NAAQS; and, (3) the increase in burden associated with the particular stage of the 2008 ozone implementation program as areas are reclassified from Serious to Severe-15. In total, the EPA estimates there to be an additional burden of 357,400 hours for the state respondents over the 3-year period compared to the 102,000 hours during the period of the 8-hour ozone NAAQS ICR currently approved by OMB (EPA ICR No. 2247.03). Another minor difference in burden is that the previous ICR did not include the burden estimate for second 10-year maintenance plans required from states for four 1997 ozone maintenance areas and three 2008 ozone maintenance areas.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–09014 Filed 4–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OAR–2011–0371; FRL—10023–35–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; National Volatile Organic Compound Emission Standards for Architectural Coatings (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an Information Collection Request (ICR), National Volatile Organic Compound Emission Standards for Architectural Coatings (EPA ICR Number 1750.09, OMB Control Number 2060–0393) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed extension of the ICR, which is currently approved through June 30, 2021. Public comments were previously requested via the **Federal Register** on September 16, 2020, during a 60-day comment period. This document allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 1, 2021.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–OAR–2011–0371, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa,gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: J. Kaye Whitfield, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–04), Research Triangle Park, North Carolina 27711, telephone number: 919–541–2509; fax number: 919–541–4991; email address: *whitfield.kaye@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov/.* The docket can be viewed online at *http://www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The EPA is required under section 183(e) of the Clean Air Act (CAA) to regulate volatile organic compound (VOC) emissions from the use of consumer and commercial products. Pursuant to CAA section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Architectural and industrial maintenance coatings are included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart D which specifies that manufacturers and importers of architectural coatings adhere to volatile organic compound (VOC) content limits in the regulation. Information collection requirements for manufacturers and importers complying with the VOC content limits consist of product labeling; an initial notification report, which includes an explanation of any date code used; and subsequent explanations of any date codes revised after submittal of the initial report. The regulation does not contain any additional reporting or recordkeeping requirements unless a manufacturer or importer chooses to comply through one of the optional provisions in lieu of meeting the VOC content limits (*i.e.,* the tonnage exemption, exceedance fee, or recycled coating credit provisions).

Form numbers: None.

Respondents/affected entities: Respondents are manufacturers, distributors, and importers of architectural coatings.

Respondent's obligation to respond: Mandatory under 40 CFR part 59, subpart D—National Volatile Organic Compound Emission Standards for Architectural Coatings.

Estimated number of respondents: 500 (total).

Frequency of response: On occasion.

Total estimated burden: 14,661 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,481,441 (per year). There are no annualized capital or operation and maintenance costs.

Changes in the estimates: Labor rates have been updated using 2019 values, leading to an increase in the total estimated respondent cost burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–09017 Filed 4–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10019–08–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the State of Indiana's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of April 30, 2021.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, CROMERR Program Manager, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic

reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On July 21, 2020, the Indiana Department of Environmental Management (IDEM) submitted an application titled IDEM Modernized Enterprise System for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed IDEM's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the applications met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Indiana's request to revise/modify its following EPA-authorized programs under 40 CFR parts 60, 63, 70, 123, 403, 271 and 281, to allow electronic reporting under 40 CFR parts 60, 61, 63, 64, 65, 70, 122, 125, 403–471, 260–270, 272–279, and 280 is being published in the **Federal Register**:

Part 60: Standards of Performance for New Stationary Sources (NSPS/CAR/Clean Air Act Title III) Reporting under CFR 60 & 65

Part 63: National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP MACT/Clean Air Act Title III) Reporting under CFR 61, 63 & 65

Part 70: State Operating Permit Programs (Clean Air Act Title V) Reporting under CFR 64 & 70

Part 123: EPA-Administered Permit Programs: the National Pollutant Discharge Elimination System (NPDES) Reporting under CFR 122 & 125

Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under CFR 403–471

Part 271: Requirements for Authorization of State Hazardous Waste Programs (RCRA Subtitle C) Reporting under CFR 260–270, 272–279

Part 281: Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) Reporting under CFR 280

IDEM was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: February 19, 2021.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2021–09005 Filed 4–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0690; FRL—10023–43–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; EPA's Light-Duty In-Use Vehicle Testing Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), EPA's Light-Duty In-Use Vehicle Testing Program (EPA ICR Number 0222.12, OMB Control Number 2060–0086) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2021. Public comments were previously requested via the **Federal Register** on October 9, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 1, 2021.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OAR–2010–0690, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number: 734–214–4851; fax number: 734–214–4869; email address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA has an ongoing program to evaluate the emissions performance of light-duty motor vehicles (*i.e.,* passenger cars and light trucks) after they have been introduced into commerce. This program, known as EPA's ''in-use'' program, operates in conjunction with other motor vehicle emissions testing programs conducted by the Agency and the light-duty motor vehicle manufacturers. These other test programs include confirmatory certification testing of prototype vehicles by manufacturers and EPA and the mandatory manufacturer in-use verification program (IUVP.) The Clean Air Act directs EPA to ensure that motor vehicles comply with emissions requirements throughout their useful

lives. The primary purpose of EPA's in-use program is information gathering. Nevertheless, EPA can require a recall if it receives information, from whatever source, including in-use testing, that a ''substantial number'' of any class or category of vehicles or engines, although properly maintained and used, do not conform to the emission standards, when in actual use throughout their useful life.

The EPA in-use program can be broken down into three closely related components. The first component involves the selection of classes of passenger cars and light trucks, totaling approximately 119 vehicles, for surveillance testing at EPA's National Vehicle and Fuel Emissions Laboratory (NVFEL.) In some cases, surveillance testing may be followed by confirmatory testing to develop additional information related to test failures observed in a class during surveillance testing. Confirmatory testing involves the selection of approximately 10 passenger cars and light trucks per class, averaging approximately 8 vehicles per year, for further testing at EPA's NVFEL. Confirmatory testing differs from surveillance testing in that the vehicles must meet stricter maintenance and use criteria. However, the emissions tests that are conducted are the same for surveillance and confirmatory testing. The second program component involves the testing of a subset of vehicles from the surveillance recruitment for operation of on-board diagnostics (OBD) systems. EPA does not currently recruit vehicles for OBD testing but includes the testing in this ICR in the event that OBD testing is resumed. The third component involves the special investigation of vehicles to address specific issues. The number of vehicles procured under this category may vary from year to year. Participation in the telephone screenings to identify qualifying light-duty vehicles, as well as the vehicle testing, is strictly voluntary. A group of 25 to 50 potential participants is identified from state vehicle registration records. These potential participants are asked to return a form indicating their willingness to participate and if so, to verify some limited vehicle information. Three of those who return the form are called and asked several screening questions concerning vehicle condition, operation and maintenance. Additional groups of potential participants may be contacted until a sufficient number of vehicles has been obtained. Owners verify the vehicle screening information when they deliver their vehicles to EPA or release the vehicle to EPA, voluntarily provide maintenance records for copying, receive a cash incentive and, if requested, a loaner car, and finally receive their vehicle from EPA at the conclusion of the testing.

Form Numbers: 5900–304, 5900–305, 5900–306, 5900–307, 5900–308, 5900–309.

Respondents/affected entities: Passenger car and light truck owners.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: Approximately 993 vehicle owners/lessees returned EPA's forms indicating interest in participating in the program and approximately 127 ultimately participated.

Frequency of response: On occasion.

Total estimated burden: 228 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $5,864 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 74 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a decrease in the number of responses returned to EPA by potential participants and the associated burden.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–09013 Filed 4–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2010–0757; FRL–10023–36–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the US Environmental Protection Agency (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the US Environmental Protection Agency (EPA ICR Number 2260.07, OMB Control Number 2090–0029) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2021. Public comments were previously requested via the **Federal Register** during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 1, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OA–2010–0757, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *Docket_OMS@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Toni Rousey, Office of Resources and Business Operations, Federal Advisory Committee Management Division, Mail Code 1601M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–5356; email address: *rousey.toni@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The purpose of this information collection request is to assist the EPA in selecting federal advisory committee members who will be appointed as Special Government Employees (SGEs), mostly to the EPA's

scientific and technical committees. Agency officials developed the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency,'' also referred to as Form 3110–48, for greater inclusion of information to discover any potential conflicts of interest as recommended by the Government Accountability Office.

Form Numbers: EPA Form 3110–48.

Respondents/affected entities: Entities potentially affected by this action are approximately 325 candidates for membership as SGEs on EPA federal advisory committees. SGEs are required to file a confidential financial disclosure report (Form 3110–48) when first appointed to serve on EPA advisory committees, and then annually thereafter. Committee members may also be required to update the confidential form before each meeting while they serve as SGEs.

Respondent's obligation to respond: Required to serve as an SGE on an EPA federal advisory committee (5 CFR 2634.903).

Estimated number of respondents: 325 (total).

Frequency of response: Once and annually.

Total estimated burden: 325 hours per year (annually). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $35,880 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 175 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This change is due to a decrease in the estimated number of respondents (from 500 to 325).

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–09018 Filed 4–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9056–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS) Filed April 19, 2021 10 a.m. EST Through April 26, 2021 10 a.m. EST Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20210043, Final, FRA, OR, Oregon Passenger Rail Tier 1 Final Environmental Impact Statement/Combined Record of Decision for the Oregon Portion of the Pacific Northwest Rail Corridor (Portland to Eugene), Contact: Lydia Kachadoorian 781–227–0778. Under 23 U.S.C. 139(n)(2), FRA has issued a single document that consists of a final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action

EIS No. 20210044, Draft, USN, MD, Testing and Training Activities in the Patuxent River Complex, Comment Period Ends: 06/15/2021, Contact: Crystal Ridgell 301–757–5282.

EIS No. 20210045, Draft, USFWS, OR, Draft Bighorn Sheep Management Plan Environmental Impact Statement, Comment Period Ends: 06/14/2021, Contact: Shannon Ludwig 541–947–3315.

EIS No. 20210046, Final, USACE, CA, Phase 3 Reclamation District 17 Levee Seepage Repair Project, Review Period Ends: 06/01/2021, Contact: Tanis Toland 916–557–6717.

Dated: April 27, 2021.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021–09062 Filed 4–29–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2016–0762; FRL–10023–15–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; General Administrative Requirements for Assistance Programs (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), General Administrative Requirements for Assistance Programs (EPA ICR Number 0938.22, OMB Control Number 2030–0020) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through April 30, 2021. In addition, this ICR includes EPA's Disadvantaged Business Enterprise (DBE) Program as a result of the relocation of the DBE Program from the Office of Small and Disadvantaged Business Utilization to the Office of Grants and Debarment. The information collection activities for the DBE Program were previously covered under OMB Control Number 2090–0030. Public comments were previously requested via the **Federal Register** on November 6, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 1, 2021.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OARM–2016–0762, online using *www.regulations.gov* (our preferred method), by email to *docket_oms@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Elizabeth January, Office of Grants and Debarment, National Policy, Training and Compliance Division, Mail Code: 3903R, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (617) 918–8655; fax number: (202) 565–2470; email address: *January.Elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain

in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The information is collected from applicants and recipients of EPA assistance to monitor adherence to the programmatic and administrative requirements of the Agency's financial assistance program, which includes the Agency's DBE program. The information collected is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This ICR renewal requests authorization for the collection of information under EPA's General Regulation for Assistance Programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). This ICR combines all of these requirements under OMB Control Number 2030–0020. The information required by these regulations will be used by EPA award officials to make assistance awards and assistance payments and to verify that the recipient is using Federal funds appropriately.

Form Numbers:

EPA Form 190–F–04–001, ''EPA Payment Request''

EPA Form 190–F–05–001, ''Fellowship Stipend Payment Enrollment Form''

EPA Form 4700–4, ''Preaward Compliance Review Report for All Applicants and Recipients Requesting Federal Financial Assistance''

EPA Form 5700–52A, ''MBE/WBE Utilization Under Federal Grants and Cooperative Agreements''

EPA Form 5700–53, ''Lobbying and Litigation Certification for Grants and Cooperative Agreements''

EPA Form 5700–54, ''Key Contacts Form,'' and EPA Form 5700–54–2, ''Key Contacts Form for Multiple Principal Investigators''

EPA Form 5770–2, ''Fellowship Application''

EPA Form 5770–3, ''Fellowship Facilities and Commitment Statement''

EPA Form 5770–5, ''Agency Fellowship Certification''

EPA Form 5770–7, ''EPA Fellowship Activation Notice''

EPA Form 5770–8, ''Fellowship Agreement''

EPA Form 5770–9, ''Completion of Studies Notice''

EPA Form 6600–01, ''EPA Administrative and Financial Onsite Review Questionnaire''

EPA Form 6600–06, ''Certification Regarding Lobbying''

EPA Form 6600–08A, ''Certificate of Indirect Costs for State & Local Governments''

EPA Form 6600–08B, ''Lobbying Indirect Cost Certificate for Non-Profit Organizations'' and ''Certificate of Indirect Costs for Indirect (F&A) Cost Rate for Non-Profit Organizations''

EPA Form 6600–09, ''EPA Administrative Capability Questionnaire''

NCER Form 5, ''EPA Office of Research and Development Current and Pending Support''

Respondents/affected entities: The primary recipients of EPA assistance agreements are State and local governments, Indian Tribes, educational institutions, and not-for-profit institutions.

Respondent's obligation to respond: Required to obtain an assistance agreement (40 CFR part 30, 40 CFR part 31, and 40 CFR part 33 for awards made prior to December 26, 2014, and 2 CFR 200, 2 CFR 1500, and 40 CFR part 33 for awards made after December 26, 2014).

Estimated number of respondents: 3,048 (total).

Frequency of response: On occasion, quarterly, and annually.

Total estimated burden: 94,606 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $6,054,791 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 4,482 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The increase is partially due to the incorporation of burden into this ICR associated with the relocation of the DBE Program from OSDBU to OGD. EPA also made adjustments to the estimated number of respondents for each of the requirements included in the ICR and to the burden hour estimates for three of the requirements.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–09016 Filed 4–29–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–21DA; Docket No. CDC–2021–0011]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Phased Approach to the Resumption of Passenger Operations. The proposed collection outlines a number of information collection activities required as part of the process to returning to passenger operations.

DATES: CDC must receive written comments on or before June 29, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0011 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA)

(44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Phased Approach to the Resumption of Passenger Operations—Existing Collection in use without an OMB Control Number—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Framework for Conditional Sailing Order published in the **Federal Register** on November 4, 2020 prohibits a cruise ship operator from commencing or continuing any regular passenger operations without a COVID–19 Conditional Sailing Certificate issued by HHS/CDC. This information collection request outlines the reporting and document retention requirements that are part of a phased approach to resuming passenger operations.

Per CDC's Framework for Conditional Sailing Order, cruise ship operators with ships that have not been in U.S. waters during the period of the No Sail Order (NSO) or voluntarily withdrew their ships, must have a NSO response plan deemed complete and accurate, including having submitted to CDC a signed Acknowledgment of No Sail Order Response Plan Completeness and Accuracy. In addition, cruise ship operators must continue to follow their cruise lines' complete, accurate, and acknowledged NSO response plans per the No Sail Order and Suspension of Further Embarkation; Notice of Modification and Extension and Other Measures Related to Operations published at 85 FR 21004 (April 15, 2020) (*i.e.,* ''No Sail Order response plan''), as modified and extended July 16, 2020 (published at 85 FR 44085 (July 21, 2020)), and September 30, 2020 (published at 85 FR 62732 (October 5, 2020)).

The Framework for Conditional Sailing Order introduced a phased-in approach to the resumption of cruise ship passenger operations. This Framework Order details the requirements of the initial phase, which focuses on mass testing of crew and building the laboratory capacity needed to test both crew and future passengers.

The Second Phase of the Framework Order focuses on preparation for simulated voyages. As required under the CSO, a cruise ship operator's agreement with U.S. port authorities and local health authorities must include the following elements: (1) A port agreement between the cruise ship operator and port authority to determine the number of cruise ships operating out of any single port in order to not overburden the public health response resources of any single jurisdiction in the event of a COVID–19 outbreak; (2) medical care agreements between the cruise ship operator and health care entities, addressing evacuation and medical transport to onshore hospitals for passengers and crew in need of medical care, in accordance with CDC technical instructions and orders; and (3) housing agreements between the cruise ship operator and one or more shoreside facilities for isolation and quarantine of passengers or crew members with COVID–19 and close contacts, identified from the day of embarkation through disembarkation for each voyage. This Phase also includes a shift in reporting requirements using the CDC (EDC) form previously approved in OMB Control Number 0920–0134 Foreign Quarantine Regulations. Starting in this phase, the form will be required from cruise ships on a daily, rather than weekly, rhythm.

Phase 2B of the Framework Order focuses on simulated voyages with volunteers playing the role of passengers to test cruise ship operators' ability to mitigate COVID–19 risk. A cruise ship operator must submit a Request for Approval to Conduct a Simulated Voyage Prior to Issuance of COVID–19 Conditional Sailing Certificate to conduct a simulated voyage at least 30 calendar days prior to the voyage. CDC will issue additional technical guidance outlining the specific areas that may be inspected and corresponding recommendations.

Following each simulated voyage, the cruise ship operator must document any deficiencies in its health and safety protocols through an ''after-action'' report and address how the cruise ship operator intends to address those deficiencies prior to applying for a COVID–19 Conditional Sailing Certificate. This after-action report must also include test results for any volunteer passengers or crew on the simulated voyage.

As a condition of applying for a COVID–19 Conditional Sailing Certificate (Phase 3), a cruise ship operator must have successfully conducted a simulated voyage or series of simulated voyages demonstrating the cruise ship operator's ability to mitigate the risks of COVID–19 onboard its cruise ship. The CDC COVID–19 Conditional Sailing Certificate Application form includes certain minimum requirements that must be met prior to a restricted voyage and burden for these requirements is outlined in section 12 below. These documents must be submitted 60 days prior to any proposed restricted voyage. If the Certificate is denied, revoked, or suspended, a cruise ship operator may submit a written appeal of a denial of its application for a COVID–19 Conditional Sailing Certificate or a revocation or suspension of its COVID–19 Conditional Sailing Certificate.

Compliance with the Framework for Conditional Sailing Order, beyond the information collections outline above, are primarily associated with the testing required, both onshore and onboard. This estimate includes the cost of onboard testing and lab equipment and maintenance on the ship.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Cruise ship operator	No Sail Order Response Plan	5	1	2,400/60	200
Cruise ship operator	Request for Embarkation of Essential Crew and Contractors submitted to USCG.	5	1	10/60	1
Cruise ship operator	CDC an Attestation for Non-Commercial Travel of Disembarking Crew for Cruise Ship Operators During the No Sail Order.	5	5	15/60	7
Cruise ship operator	Virtual Implementation Checks	5	2	75/60	13
Cruise ship operator	Enhanced Data Collection (EDC) During COVID–19 Pandemic Form (Daily).	130	365	15/60	11,863
Cruise ship operator	CLIA Certified Laboratory Information—Onshore.	20	25	5/60	42
Cruise ship operator	Approval of Onboard COVID–19 Testing Instrument.	20	25	5/60	42
Cruise ship operator	Request for Embarkation of Essential Crew and Contractors.	130	5	10/60	109
Cruise ship operator	Attestation for Commercial Transportation of Disembarking Crew for Cruise Ship Operators During the Initial Phases of CDC's Framework for Conditional Sailing Order (CSO).	130	5	15/60	163
Cruise ship operator	Agreement with Health Care Organization with signoff from Local Health Authorities.	130	1	600/60	1,300
Cruise ship operator	Agreement with Port of Entry with signoff from Local Health Authority.	130	1	600/60	1,300
Cruise ship operator	Agreement with Housing Facility with signoff from Local Health Authority.	130	1	600/60	1,300
Cruise ship operator	Request for Embarkation of Non-Essential Crew and contractors.	130	1	10/60	10
Cruise ship operator	Request for Approval to Conduct a Simulated Voyage Prior to Issuance of COVID–19 Conditional Sailing Certificate.	130	1	600/60	1,300
Passenger (3rd party disclosure)	Informed Consent and Medical Certification with no pre-existing conditions for Simulated Voyage.	39,000	1	75/60	48,750
Cruise shop operator	Remote and In-person Inspections	130	1	120/60	260
Cruise shop operator	After Action Report, Simulated Voyage.	130	1	600/60	1,300
Cruise ship operator	COVID–19 Conditional Sailing Certificate Application.	130	1	600/60	1,300
Cruise ship operator	Remote and In-person Inspections	130	1	120/60	260
Total					69,530

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–09094 Filed 4–29–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–0891; Docket No. CDC–2021–0045]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled World Trade Center Health Program Enrollment, Petitions, Designated Representative/HIPAA Authorization, and Member Satisfaction. Data collection is designed to provide healthcare monitoring and treatment to responders of the 9/11/2001 terrorist attacks at the World Trade Center in New York City, the Pentagon in Washington, DC, and Shanksville, Pennsylvania, as well as survivors in the New York City area.

DATES: CDC must receive written comments on or before June 29, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0045 by any of the following methods:

Federal eRulemaking Portal: Regulations.gov. Follow the instructions for submitting comments.

- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

World Trade Center Health Program Enrollment, Petitions, Designated Representative/HIPAA Authorization, and Member Satisfaction. (OMB Control No. 0920–0891, Exp. 12/31/2021)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH seeks to request OMB approval to revise the currently approved information collection activities that support the World Trade Center (WTC) Health Program. The James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347, as amended by Pub. L. 114–113) created the WTC Health Program to provide medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001, or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

Since its inception in 2011, the WTC Health Program has been approved to collect information from applicants and program members (enrolled WTC responders and survivors) concerning enrollment, appointment of a designated representative or third party, and petitions regarding adding a new WTC-related health condition in order to determine coverage under the Program. The current approved total estimated burden is 14,063 hours annually (OMB Control No. 0920–0891, Exp. December 31, 2021).

The WTC Health Program has determined that some existing forms need to be updated (WTC Health Program Applications for Enrollment and Designated Representative Appointment/Designated Representative HIPAA Authorization Forms). For this revision, the burden hours on the WTC Health Program Applications for Enrollment increased due to an expected increase of application volume. The Program updated the enrollment applications for plain language and improved processing. We estimate 15,837 individuals will submit either a FDNY (+95 from previous package), General Responder (+3,740 from previous package), Pentagon/Shanksville Responder (−388 from previous package), or WTC Survivor (+7,881 from previous package) application annually. The applications will take approximately 0.5 hours to complete. The burden estimate for the applications is 7,919 hours. This is an increase from 2018 when the estimated annualized burden was 2,251.

Of the Applications for Enrollment we expect to receive each year, CDC estimates 3,830 (+1,355 from 2018) are

General Responder applications from the NY/NJ area, and will have to select which clinic they would like to visit. It is expected that it will take the member 0.25 hours to complete the postcard. The burden hours for the General Responder Clinic Postcard is 958 hours (+339 hours from 2018).

The Program finds it necessary to update and add new forms to allow applicants and Program members to grant permission to share information with a designated representative or third person about an individual's application or case. We estimate that 1,300 applicants and members will submit a Designated Representative Appointment Form and Designated Representative HIPAA Authorization Form annually. These forms will take approximately 0.25 hours to complete. The burden estimate for these forms is 650 hours. This is an increase from 2018 when the estimated annualized burden was 16.

For this Revision, new information collections related to WTCHP General HIPAA Authorization to Third Parties, HIPAA Authorization for Deceased Individuals, Designated Representative Revocation, and Member Satisfaction Survey should be added.

The Program proposes to extend this information collection to account for adding the WTCHP HIPAA Authorization for Deceased Individuals (+8 burden hours), WTCHP General HIPAA Authorization to Third Parties (+8 burden hours), and Designated Representative Revocation Form (+4 burden hours). The WTCHP HIPAA Authorization for Deceased Individuals was created so a family member and/or personal representative of a deceased applicant or member can request program documentation and/or medical records related to the deceased applicant/member. The WTCHP General HIPAA Authorization to Third Parties was created for members to give the Program permission to share information about their case with a third party, such as a lawyer. The Designated Representative Revocation Form was created for members who wish to remove or replace a currently appointed designated representative. We estimate that 30 applicants or members will submit a WTCHP HIPAA Authorization for Deceased Individuals, 30 applicants will submit a WTCHP General HIPAA Authorization to Third Parties form, and 15 applicants or members will submit a Designated Representative Revocation Form annually. These forms will take no longer than 0.25 hours to complete. The total burden estimate for the WTCHP HIPAA Authorization for Deceased Individuals form is eight hours. The total burden estimate for the WTCHP General HIPAA Authorization to Third Parties form is eight hours. The total burden estimate for the Designated Representative Revocation Form is four hours.

The Program also finds it necessary to add a Member Satisfaction Survey. This survey is for WTC Health Program members and asks for feedback about their satisfaction in the Program, at their clinic, and how they would like to receive Program communications. It is estimated that the Program will send 110,000 surveys a year. The response rate for previous member satisfaction surveys have been approximately 6%. Therefore, it is estimated that the Program will receive 6,600 surveys a year. The survey should take no longer than 0.5 hours to complete for a burden estimate of 3,300 burden hours.

In this Revision, the Program finds it necessary to remove documents that do not require OMB clearance from the information collection. A portion of the decrease in annualized burden (−46,260 hours) is due to adjusting the burden table to only include documents that are required for OMB Clearance. Some documents were removed because they are letters and there is no requirement for the public to fill them out. These documents are being included as supporting documentation. The letters removed are as follows:

- Denial Letter and Appeal Notification—Enrollment (−23 hours)
- Disenrollment Letter and Appeal Notification—Enrollment (−2 hours)
- Decertification Letter and Appeal Notification—Denial and Decertification Exposure (−8 hours)
- Denial Letter and Appeal Notification—Health Condition Certification (−90 hours)
- Denial Letter and Appeal Notification—Treatment Authorization (−39 hours)
- Reimbursement Denial Letter and Appeal Notification—Providers (−300 hours)

Another portion of the decrease in annualized burden (−10,655 hours) is due to removing forms that are not public and are filled out by Program physicians and contractors for the purpose of providing medical care. These forms are as follows:

- Physician Request for Certification (WTC–3) (−10,000 hours)
- WTC Health Program Medical Travel Refund Request (−2 hours)
- Outpatient prescription pharmaceuticals (−653 hours)

The Petition for the Addition of a New WTC-Related Health Condition for Coverage was previously approved in 2018. The burden hours for the Petition form decreased from 60 to 35 as the Program has received less petitions than anticipated in 2018. The Zadroga Act identified a list of health conditions for which individuals who are enrolled in the WTC Health Program may be monitored or treated [Title XXXIII, § 3312(a)(3)]; those conditions are reiterated and expanded in the associated WTC Health Program regulations at 42 CFR 88.15. Under WTC Health Program regulations (42 CFR 88.16), interested parties may submit a petition to request that a new health condition be added to the list of conditions specified in § 88.15. The forms should take no longer than one hour to complete for a burden estimate of 35 burden hours.

CDC requests OMB Clearance for three years. The total estimated annualized burden hours are 12,882.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
FDNY Responder	World Trade Center Health Program, FDNY Responder Eligibility Application for Enrollment.	140	1	30/60	70
General Responder	World Trade Center Health Program, Responder Eligibility Application for Enrollment (Other than FDNY).	6,215	1	30/60	3,108

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Pentagon/Shanksville Responder	World Trade Center Health Program, Pentagon/Shanksville Responder Application for Enrollment.	242	1	30/60	121
WTC Survivor	World Trade Center Health Program, Survivor Eligibility Application for Enrollment (all languages).	9,240	1	30/60	4,620
General responder	Clinic Selection Postcard for new general responders in NY/NJ to select a clinic.	3,830	1	15/60	958
Responder/Survivor/Advocate (physician).	Petition for the addition of health conditions.	35	1	1	35
Program Members	Designated Representative Appointment Form.	1,300	1	15/60	325
Program Members	HIPAA Release Form to allow the sharing of member information with a third party.	1,300	1	15/60	325
Program Members	Member Satisfaction Survey	6,600	1	30/60	3,300
General Public	WTCHP HIPAA Authorization for Deceased Individuals.	30	1	15/60	8
General Public	WTCHP General HIPAA Authorization to Third Parties.	30	1	15/60	8
Designated (DR) Representative Revocation Form.	DR form that removes the members current designated representative.	15	1	15/60	4
Total					12,882

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–09095 Filed 4–29–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Assessing the Implementation and Cost of High-Quality Early Care and Education: Field Test, OMB 0970–0499

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) seeks approval to collect new information to use in testing measures of the implementation and costs of high-quality early care and education as part of the project, Assessing the Implementation and Cost of High-Quality Early Care and Education (ECE–ICHQ). The study received approval for a field test to validate and improve the psychometric properties of these measures in November 2019. This request is to add a measure to the approved field test to help further assess the associations between measures of implementation, cost, and quality.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained, and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF seeks approval to collect new information to use in testing measures of the implementation and costs of high-quality early care and education as part of the ECE–ICHQ project. The project's goal is to create a technically sound and feasible instrument that will provide consistent, systematic measures of the implementation and costs of education and care in center-based settings that serve children from birth to age 5. The resulting measures will inform research, policy, and practice by improving understanding of variations in what centers do to support quality, their associated costs, and how resources for ECE may be better aligned with expectations for quality. The study received approval for a field test to validate and improve the psychometric properties of these measures in November 2019. For all previously approved materials for this study, see *https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=0970-0499.* This request is to add a measure to the approved field test to help further assess the associations between measures of implementation, cost, and quality. The field test and this additional measure will include only remote data collection.

Respondents: Teachers and aids.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Teaching staff survey	1,120	1	.50	560

Estimated Total Annual Burden Hours: 560.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: § 658O(a)(5) as amended by the CCDBG Act of 2014 § 9

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–09052 Filed 4–29–21; 8:45 am]

BILLING CODE 4184–73–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0345]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Data to Support Drug Product Communications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing that a collection of information entitled ''Data to Support Drug Product Communications'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA).

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, *301–796–7726, PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On February 2, 2020, the Agency submitted a proposed collection of information entitled ''Data to Support Drug Product Communications'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0695. The approval expires on March 31, 2024. A copy of the supporting statement for this information collection is available on the internet at *https://www.reginfo.gov/public/do/PRAMain.*

Dated: April 26, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–09043 Filed 4–29–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) 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 of Dental and Craniofacial Research Special Emphasis Panel; End the HIV Epidemic.

Date: May 28, 2021.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yun Mei, MD, Scientific Review Officer, Scientific Review Branch, Natl Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite #670, Bethesda, MD 20892, (301) 827–4639, *yun.mei@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 26, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–09041 Filed 4–29–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group Career Development Facilitating the Transition to Independence.

Date: June 10–11, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–496–9667, *nijaguna.prasad@nih.gov*.

Name of Committee: National Institute on Aging Initial Review Group Career Development for Established Investigators and Conference Grants.

Date: June 10–11, 2021.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov*.

Name of Committee: National Institute on Aging Initial Review Group Career Development for Early Career Investigators.

Date: June 10–11, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Carmen Moten, Ph.D., MPH Scientific Review Officer, Scientific Review Branch, National Institute on Aging National Institutes of Health Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, *cmoten@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 27, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–09076 Filed 4–29–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be held as a virtual meeting and is open to the public. 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 open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

A portion of this meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: May 26, 2021.

Open: 9:00 a.m. to 12:45 p.m.

Agenda: Report of the Director, NIDCR and concept clearances.

Place: National Institutes of Health National Institute of Dental and Craniofacial Res. 6701 Democracy Blvd. Bethesda, MD 20892 (Virtual Meeting).

Closed: 1:15 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, National Institute of Dental and Craniofacial Res., 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alicia J. Dombroski, Ph.D., Director Division of Extramural Activities, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, 301–594–4805, *adombroski@nidcr.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 27, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–09072 Filed 4–29–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) 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: Center for Scientific Review Special Emphasis Panel Fellowship: Respiratory Fellowship-A.

Date: May 10, 2021

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7818, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: _April 27, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–09074 Filed 4–29–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0189]

Cooperative Research and Development Agreement—Tactical Mobile Technology Architecture; Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice; correction.

SUMMARY: The Coast Guard published a document in the **Federal Register** on April 27, 2021, concerning a notice of intent; request for comments on a Cooperative Research and Development Agreement—Tactical Mobile Technology Architecture. The document contained an incorrect company name for who we are currently considering partnering with on the research and development.

DATES: This correction is effective April 30, 2021.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email, Mr. David Cote, Project Official, IT and Networks Branch, U.S. Coast Guard Research and Development Center, telephone 860–271–2693, email *david.e.cote@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 27, 2021, in FR Doc. 2021–08666, on page 22217, in the third column, the company name ''IMPRESS Technologies Inc.'' is corrected to read ''IMPRES Technology Solutions Inc.''. The company name was misspelled in the original publication of the notice of intent.

Dated: April 27, 2021.

M.T. Cunningham,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2021–09098 Filed 4–29–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2021–0029]

Notice of Intent To Prepare an Environmental Impact Statement for Revolution Wind LLC's Proposed Wind Energy Facility Offshore Rhode Island

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Consistent with the regulations implementing the National Environmental Policy Act (NEPA), the Bureau of Ocean Energy Management (BOEM) announces its intent to prepare an Environmental Impact Statement (EIS) for the review of a construction and operations plan (COP) submitted by Revolution Wind, LLC (Revolution Wind) (formerly DWW Rev I, LLC). The COP proposes the construction and operation of a wind energy facility offshore Rhode Island with export cables connecting to the onshore electric grid in North Kingstown, Rhode Island. This notice of intent (NOI) announces the EIS scoping process for the Revolution Wind COP. Additionally, this NOI seeks public comment and input under section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations. Detailed information about the proposed wind energy facility, including the COP, can be found on BOEM's website at: *www.boem.gov/Revolution-Wind.*

DATES: Comments received by June 1, 2021, will be considered.

BOEM will hold virtual public scoping meetings for the Revolution Wind EIS at the following dates and times (Eastern):

- Thursday, May 13, 5:30 p.m.;
- Tuesday, May 18, 5:30 p.m.; and
- Thursday, May 20, 1:00 p.m.

ADDRESSES: Written comments can be submitted in any of the following ways:

- Delivered by mail or delivery service, enclosed in an envelope labeled ''Revolution Wind COP EIS,'' and addressed to Program Manager, Office of Renewable Energy, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or
- Through the regulations.gov web portal: Navigate to *http://www.regulations.gov* and search for Docket No. BOEM–2021–0029. Click on the ''Comment Now!'' button to the right of the document link. Enter your information and comment, then click ''Submit.''

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1722 or *michelle.morin@boem.gov.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposed Action

In Executive Order 14008, President Biden stated that it is the policy of the United States ''to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.''

Through a competitive leasing process under 30 CFR 585.211, Revolution Wind was awarded Commercial Lease OCS–A 0486 covering an area offshore Rhode Island (the Lease Area). Revolution Wind has the exclusive right to submit a COP for activities within the Lease Area, and it has submitted a COP to BOEM proposing the construction and installation, operations and maintenance, and conceptual decommissioning of an offshore wind energy facility in the Lease Area (the Project).

The goal of Revolution Wind is to develop a commercial-scale, offshore wind energy facility in the Lease Area with up to 100 wind turbine generators, inter-array cables, up to two offshore substations, and two transmission cables making landfall in North Kingstown, Rhode Island. The Project would contribute to Connecticut's mandate of 2,000 megawatts (MW) of offshore wind energy by 2030, as outlined in Connecticut Public Act 19–71, and Rhode Island's 100 percent renewable energy goal by 2030, as outlined in the Rhode Island Governor's Executive Order 20–01 of January 2020. Furthermore, Revolution Wind's goal to construct and operate a commercial-scale, offshore wind energy facility in the Lease Area is intended to fulfill the following three power purchase agreements (PPAs): (1) A 200–MW contract with the State of Connecticut approved in January 2019; (2) a 400–MW contract with the State of Rhode Island approved in June 2019; and (3) a 104–MW contract with the State of Connecticut approved in December 2019.

Based on the goals of the applicant and BOEM's authority, the purpose of BOEM's action is to respond to Revolution Wind's COP proposal and determine whether to approve, approve with modifications, or disapprove Revolution Wind's COP to construct and install, operate and maintain, and decommission a commercial-scale, offshore wind energy facility within the Lease Area (the Proposed Action). BOEM's action is needed to further the United States' policy to make Outer Continental Shelf (OCS) energy resources available for expeditious and orderly development, subject to environmental safeguards (43 U.S.C. 1332(3)), including consideration of natural resources, safety of navigation, and existing ocean uses.

In addition, the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) anticipates receipt of one or more requests for authorization to take marine mammals incidental to activities

related to the Project pursuant to the Marine Mammal Protection Act (MMPA). NMFS's issuance of an MMPA incidental take authorization is a major Federal action and, in relation to BOEM's action, is considered a connected action (40 CFR 1501.9(e)(1)). The purpose of the NMFS action—which is a direct outcome of Revolution Wind's request for authorization to take marine mammals incidental to the Project (specifically pile driving)—is to evaluate the information in Revolution Wind's application pursuant to the MMPA and 50 CFR part 216 and to issue the requested incidental take authorizations, if appropriate. The need for the NMFS action is to consider the impacts of authorizing the requested take on marine mammals and their habitat. NMFS responsibilities under the MMPA (16 U.S.C. 1371(a)(5)(D)) and its implementing regulations establish and frame the need for NMFS action. NMFS intends to adopt BOEM's EIS to support its decision on any requested MMPA incidental take authorizations.

The U.S. Army Corps of Engineers (USACE) New England District anticipates a permit action to be undertaken through authority delegated to the District Engineer by 33 CFR 325.8, pursuant to section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 403) and section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). The USACE considers issuance of a permit under these two delegated authorities a major Federal action connected to BOEM's proposed action (40 CFR 1501.9(e)(1)). The purpose and need for the project as provided by the applicant in the COP and reviewed by USACE for NEPA purposes: To provide a commercially viable offshore wind energy project within Lease OCS–A 0486 to meet New England's need for clean energy. The project will deliver 704 MW of power to the New England energy grid. The basic project purpose, as determined by USACE for section 404(b)(1) guidelines evaluation, is offshore wind energy generation. Overall project purpose for section 404(b)(1) guidelines evaluation, as determined by USACE: the construction and operation of a commercial-scale offshore wind energy project, including associated transmission lines, for renewable energy generation and distribution to the Connecticut and Rhode Island energy grids. USACE intends to adopt BOEM's EIS to support its decision on any permits requested under section 10 of the RHA or section 404 of the CWA.

Preliminary Proposed Action and Alternatives

The Proposed Action is the construction and operation of a wind energy facility as described in the COP submitted by Revolution Wind on Lease Area OCS–A 0486. In its COP, Revolution Wind is proposing the construction and operation of up to 100 wind turbine generators connected by a network of inter-array cables, up to two offshore substations connected by an offshore substation-link cable, up to two submarine export cables, up to two underground transmission circuits located onshore, and an onshore substation inclusive of up to two interconnection circuits connecting to the existing Davisville Substation in North Kingstown, Rhode Island. Foundations of wind turbine generators would be monopiles. The wind turbine generators, offshore substations, array cables, and substation interconnector cables would be located on the OCS approximately 17.4 nautical miles (20 statute miles) south of the coast of Rhode Island. The offshore export cables would be buried below the seabed of both the OCS and Rhode Island State waters. The onshore export cables, substations, and grid connections would be located in North Kingstown, Rhode Island.

If any reasonable alternatives are identified during the scoping period, BOEM will evaluate those alternatives in the draft EIS, which will also include a no action alternative. Under the no action alternative, BOEM would disapprove the COP, and Revolution Wind's wind energy facility described in the COP would not be built in the Lease Area.

Once BOEM completes the EIS and associated consultations, BOEM will decide whether to approve, approve with modification, or disapprove the Revolution Wind COP. If BOEM approves the COP and the Project is constructed, the lessee must submit a plan to decommission the facilities before the end of the lease term.

Summary of Expected Impacts

The draft EIS will identify and describe the effects of the Proposed Action on the human environment that are reasonably foreseeable and have a reasonably close causal relationship to the Proposed Action. This includes such effects that occur at the same time and place as the Proposed Action or alternatives and such effects that are later in time or not at the same place. Expected impacts include, but are not limited to, impacts (both beneficial and adverse) to air quality, water quality, bats, benthic habitat, essential fish habitat, invertebrates, finfish, birds, marine mammals, terrestrial and coastal habitats and fauna, sea turtles, wetlands and other waters of the United States, commercial fisheries and for-hire recreational fishing, cultural resources, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other marine uses, recreation and tourism, and visual resources. The effects of these expected impacts will be analyzed in the draft and final EIS.

Based on a preliminary evaluation of these resources, BOEM expects impacts to sea turtles and marine mammals from underwater noise caused by construction and from collision risks with vessel traffic. Structures installed by the Project could permanently change benthic habitat and other fish habitat. Commercial fisheries and for-hire recreational fishing may be impacted. Project structures above the water may affect the visual character defining historic properties and recreational and tourism areas. Project structures also would pose an allision and height hazard to vessels passing close by, and vessels would in turn pose a hazard to the structures. Additionally, the Project may adversely impact mineral extraction, military use, air traffic, land-based radar services, cables and pipelines, and scientific surveys. Beneficial impacts are also expected by facilitating achievement of State renewable energy goals, increasing job opportunities, improving air quality, and reducing carbon emissions. The EIS will analyze measures that would avoid, minimize, or mitigate environmental effects.

Anticipated Permits and Authorizations

In addition to the requested COP approval, various other Federal, State, and local authorizations will be required for the Revolution Wind Project. These include authorizations under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, Marine Mammal Protection Act, Rivers and Harbors Act, Clean Water Act, Coastal Zone Management Act, and other laws and regulations determined to be applicable to the Project. BOEM will also conduct government-to-government tribal consultations. For a full listing of regulatory requirements applicable to the Revolution Wind Project, please see the COP, volume I available at *https://www.boem.gov/revolution-wind/*.

BOEM has chosen to utilize the NEPA substitution process to fulfill its

obligations under NHPA. While BOEM's obligations under NHPA and NEPA are independent, the regulations implementing NHPA allow for the use of NEPA review to substitute for various aspects of NHPA's section 106 (54 U.S.C. 306108) review to improve efficiency, promote transparency and accountability, and support a broadened discussion of potential effects that a project may have on the human environment. As provided in 36 CFR 800.8(c), the NEPA process and documentation required for the preparation of an EIS and record of decision (ROD) can be used to fulfill a lead Federal agency's NHPA section 106 review obligations in lieu of the procedures set forth in 36 CFR 800.3 through 800.6. During preparation of the EIS, BOEM will ensure that the NEPA substitution process will meet its NHPA obligations necessary to successfully utilize this alternative process.

Schedule for the Decision-Making Process

After the draft EIS is completed, BOEM will publish a notice of availability (NOA) and request public comments on the draft EIS. BOEM expects to issue the NOA in July 2022. After the public comment period ends, BOEM will review and respond to comments received and will develop the final EIS. BOEM expects to make the final EIS available to the public in March 2023. A ROD will be completed no sooner than 30 days after the final EIS is released, in accordance with 40 CFR 1506.11.

Scoping Process

This NOI commences the public scoping process for identifying issues and potential alternatives for consideration in the Revolution Wind EIS. Throughout the scoping process, Federal agencies; State, tribal, and local governments; and the general public have the opportunity to help BOEM determine significant resources and issues, impact-producing factors, reasonable alternatives (*e.g.,* size, geographic, seasonal, or other restrictions on construction and siting of facilities and activities), and potential mitigation measures to be analyzed in the EIS as well as to provide additional information. In the interests of efficiency, completeness, and facilitating public involvement, BOEM will use the NEPA process to fulfill public involvement requirements established in 36 CFR 800.2(d). BOEM will involve the public, local governments, Indian tribes, and Revolution Wind and will identify other consulting parties, including consideration of all written requests by individuals and organizations to participate as consulting parties. BOEM will hold virtual public scoping meetings for the Revolution Wind EIS at the following dates and times (Eastern):

- Thursday, May 13, 5:30 p.m.;
- Tuesday, May 18, 5:30 p.m.; and
- Thursday, May 20, 1:00 p.m.

Registration for the virtual public meetings may be completed here: *https://www.boem.gov/Revolution-Wind-Scoping-Virtual-Meetings* or by calling (703) 787–1073.

NEPA Cooperating Agencies: BOEM invites other Federal agencies and State, tribal, and local governments to consider becoming cooperating agencies in the preparation of this EIS. CEQ NEPA regulations specify that qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and should be aware that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process.

Upon request, BOEM will provide potential cooperating agencies with a written summary of expectations for cooperating agencies, including schedules, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of pre-decisional information. BOEM anticipates this summary will form the basis for a memorandum of agreement between BOEM and any non-Interior Department cooperating agency. Agencies also should consider the factors for determining cooperating agency status in CEQ's memorandum entitled ''Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act'' of January 30, 2002. This document is available on the internet at: *http://energy.gov/sites/prod/files/nepapub/nepa_documents//G-CEQ*-CoopAgenciesImplem.pdf. BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. Even if a governmental entity is not a cooperating agency, it will have opportunities to provide information and comments to BOEM during the public input stages of the NEPA process.

NHPA Consulting Parties: Certain individuals and organizations with a demonstrated interest in the Project may request to participate as NHPA consulting parties under 36 CFR 800.2(c)(5) based on their legal or economic stake in historic properties affected by the Project. Additionally, the same provision allows those with concerns about the Project's effect on historic properties to request to be consulting parties. Before issuing this NOI, BOEM compiled a list of potential consulting parties and, in writing, invited these potential participants to become consulting parties. In order to become a consulting party, those invited must respond in writing, preferably by the requested response date. Interested individuals or organizations that did not receive an invitation may request to be consulting parties by writing to the appropriate staff at SWCA, which is supporting BOEM in its administration of this review. SWCA's contact for this Project is Scott Phillips at *sphillips@swca.com* or (303) 468–6903. BOEM will determine which interested parties should be consulting parties.

Comments: Federal agencies; tribal, State, and local governments; and other interested parties are requested to comment on the scope of this EIS, significant issues that should be addressed, and alternatives that should be considered. For information on how to submit comments, see the ''Addresses'' section above.

BOEM does not consider anonymous comments. Please include your name and address as part of your comment. BOEM makes all comments, including the names, addresses, and other personally identifiable information included in the comment, available for public review online. Individuals may request that BOEM withhold their names, addresses, or other personally identifiable information included in their comment from the public record; however, BOEM cannot guarantee that it will be able to do so. In order for BOEM to withhold from disclosure your personally identifiable information, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your privacy. You also must briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. 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 inspection in their entirety.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

BOEM requests data, comments, views, information, analysis,

alternatives, or suggestions from the public; affected Federal, State, tribal, and local governments, agencies, and offices; the scientific community; industry; or any other interested party on the Proposed Action. Specifically:

1. Potential effects that the Proposed Action could have on biological resources, including bats, birds, coastal fauna, finfish, invertebrates, essential fish habitat, marine mammals, and sea turtles.

2. Potential effects that the Proposed Action could have on physical resources including air quality, water quality, and wetlands and other waters of the United States.

3. Potential effects that the Proposed Action could have on socioeconomic and cultural resources, including commercial fisheries and for-hire recreational fishing, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other uses (marine minerals, military use, aviation), recreation and tourism, and scenic and visual resources.

4. Other possible reasonable alternatives to the Proposed Action that BOEM should consider, including additional or alternative avoidance, minimization, and mitigation measures.

5. As part of its compliance with NHPA(54 U.S.C. 306108) section 106 and its implementing regulations (36 CFR part 800), BOEM seeks public comment and input regarding the identification of historic properties within the Proposed Action's area of potential effects and the potential effects to those historic properties from the activities proposed under the COP. BOEM requests feedback from the public and consulting parties on the aforementioned information and any information that supports identification of historic properties under the NHPA. BOEM also solicits proposed measures to avoid, minimize, or mitigate any adverse effects on historic properties. BOEM will present available information regarding known historic properties during the public scoping period at *https://www.boem.gov/revolution-wind/.* BOEM's effects analysis for historic properties will be available for public and consulting party comment in the draft EIS.

6. Information on other current or planned activities in, or in the vicinity of, the Proposed Action and their possible impacts on the Project or the Project's impacts on those activities.

7. Other information relevant to the Proposed Action and its impacts on the human environment.

To promote informed decision making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully participate and fully inform BOEM of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and alternatives to the Proposed Action as well as economic, employment, and other impacts affecting the quality of the human environment.

The draft EIS will include a summary that identifies all alternatives, information, and analyses submitted by Federal agencies, State, tribal, and local governments, and other public commenters during the scoping process for consideration by BOEM and the cooperating agencies.

Authority: This NOI is published pursuant to NEPA, 42 U.S.C. 4321 *et seq.,* and 40 CFR 1501.9.

William Yancey Brown,

Chief Environmental Officer, Bureau of Ocean Energy Management.

[FR Doc. 2021–09048 Filed 4–29–21; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–643 and 731–TA–1493 (Final)]

Small Vertical Shaft Engines From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of small vertical shaft engines from China, provided for in subheadings 8407.90.10, 8407.90.90, 8409.91.99, 8424.30.90, and 8433.11.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the government of China.[2]

Background

The Commission instituted these investigations effective March 18, 2020, following receipt of petitions filed with the Commission and Commerce by Briggs & Stratton Corporation, Wauwatosa, Wisconsin. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of small vertical shaft engines from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 27, 2020 (85 FR 76103). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on March 9, 2021. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on April 26, 2021. The views of the Commission are contained in USITC Publication 5185 (April 2021), entitled *Small Vertical Shaft Engines from China: Investigation Nos. 701–TA–643 and 731–TA–1493 (Final).*

By order of the Commission.

Issued: April 26, 2021.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2021–09004 Filed 4–29–21; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determinations in the antidumping and countervailing duty investigations are likely to undermine seriously the remedial effect of the antidumping and countervailing duty orders on small vertical shaft engines from China. As a result, certain imports from China will be subject to retroactive countervailing and/or antidumping duties. Commissioner David S. Johanson makes negative critical circumstances determinations in the antidumping and countervailing duty investigations.

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Notice of Charter Reestablishment

In accordance with the provisions of the Federal Advisory Committee Act, Title 5, United States Code, Appendix, and Title 41, Code of Federal Regulations, Section 101–6.1015, with the concurrence of the Attorney General, I have determined that the reestablishment of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB) is in the public interest. In connection with the performance of duties imposed upon the FBI by law, I hereby give notice of the reestablishment of the APB Charter.

The APB provides me with general policy recommendations with respect to the philosophy, concept, and operational principles of the various criminal justice information systems managed by the FBI's CJIS Division.

The APB includes representatives from local and state criminal justice agencies; tribal law enforcement representatives; members of the judicial, prosecutorial, and correctional sectors of the criminal justice community, as well as one individual representing a national security agency; a representative of the National Crime Prevention and Privacy Compact Council; a representative of federal agencies participating in the CJIS Division Systems; and representatives of criminal justice professional associations (*i.e.,* the American Probation and Parole Association; American Society of Crime Laboratory Directors; International Association of Chiefs of Police; National District Attorneys Association; National Sheriffs Association; Major Cities Chiefs Association; Major County Sheriffs' of America Association; and a representative from a national professional association representing the courts or court administrators nominated by the Conference of Chief Justices). The Attorney General has granted me the authority to appoint all members to the APB.

The APB functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The Charter has been filed in accordance with the provisions of the Act.

Dated: April 12, 2021.

Christopher A. Wray,

Director.

[FR Doc. 2021–09063 Filed 4–28–21; 11:15 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

DATES: The APB will meet in open session from 9:00 a.m. until 6:00 p.m. on June 9, 2021.

ADDRESSES: The meeting will take place at the Doubletree by Hilton at the Entrance to Universal, 5780 Major Boulevard, Orlando, Florida 32819, telephone 407–351–1000. Due to COVID–19 safety precautions that limit meeting space accommodations the CJIS Division is offering a blended participation option that allows for a limited number of individuals to participate in person and additional individuals to participate via a telephone bridge line. The public will be permitted to provide comments and/or questions related to matters of the APB prior to the meeting. In-person gallery participation will be limited to the first 70 external participants who register to attend in person. Additional participants may also participate via a telephone bridge line. Please see details in the supplemental information.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Stacey Davis, Supervisory Management and Program Analyst, Advisory Process Management Office, Global Law Enforcement Support Section; 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; email *agmu@leo.gov,* telephone 304–625–2618.

SUPPLEMENTARY INFORMATION: The FBI CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Law Enforcement Enterprise Portal, National Crime Information Center, Next Generation Identification, National Instant Criminal Background Check System, National Data Exchange System, and Uniform Crime Reporting.

The meeting will be conducted with a blended participation option. The public may participate as follows: Public registrations will be processed on a first-come, first-served basis. The first 70 individuals to register will be afforded the opportunity to participate in person and are required to check-in at the meeting registration desk. Any additional registrants will be provided with a phone bridge number to participate in a listen-only mode.

Registrations will be taken via email to *agmu@leo.gov.* Information regarding the phone access will be provided prior to the meeting to all registered individuals. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Designated Federal Officer (DFO).

Any member of the public may file a written statement with the APB. Written comments shall be focused on the APB's current issues under discussion and may not be repetitive of previously submitted written statements. Written comments should be provided to Mr. Nicky J. Megna, DFO, at least seven (7) days in advance of the meeting so the comments may be made available to the APB members for their consideration prior to the meeting.

Individuals requiring special accommodations should contact Mr. Megna by no later than June 1, 2021. Personal registration information will be made publicly available through the minutes for the meeting published on the FACA website.

Nicky J. Megna,

CJIS Designated Federal Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2021–09083 Filed 4–29–21; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

State All Payer Claims Databases Advisory Committee—Notice of Virtual Meeting

AGENCY: Employee Benefits Security Administration (EBSA), Department of Labor (DOL).

ACTION: Notice.

SUMMARY: This notice announces the first meeting of the State All Payer Claims Databases Advisory Committee (hereinafter the Committee). This notice

provides information to members of the public who may be interested in attending the meeting or providing written comments related to the work of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

DATES: The first meeting of the State All Payer Claims Databases Advisory Committee will be held virtually on May 19, 2021. The meeting will begin at 9:00 a.m. and end at approximately 5:30 p.m., with a one hour break for lunch.

Deadline for Registration without Oral Presentation: May 17, 2021.

Deadline for Registration of Oral Presentations: May 14, 2021.

Deadline for Submission of Oral Remarks and Written Comments: May 14, 2021.

Deadline for Requesting Special Accommodations: May 14, 2021.

ADDRESSES: The meeting will be held via webinar. The webinar link and log-in information will be available at DOL's Committee website: *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/state-all-payer-claims-databases-advisory-committee.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Schumacher, Designated Federal Officer, EBSA, DOL, by sending an email to *SAPCDAC@dol.gov.* For press inquiries please contact Grant Vaught, Office of Public Affairs, DOL at 202–693–4672.

SUPPLEMENTARY INFORMATION: The Committee is mandated by section 735 of the Employee Retirement Income Security Act of 1974 as added by section 115(b) of the No Surprises Act, enacted as part of the Consolidated Appropriations Act, 2021, div. BB, tit. I, Public Law 116–260 (Dec. 27, 2020). The Committee is governed by the provisions of the FACA, as amended, 5 U.S.C. App.2.

The Committee shall advise the Secretary of Labor on the standardized reporting format for the voluntary reporting by group health plans to State All Payer Claims Databases. Reporting will include medical claims, pharmacy claims, dental claims, and eligibility and provider files collected from private and public payers. The Committee shall also advise the Secretary on what guidance is necessary to provide to States on the process by which States may collect such data in the standardized reporting format.

The Committee will be responsible for issuing a report that includes recommendations on the establishment of the format and guidance to the Secretary of Labor and certain congressional committees no later than 180 days after the date of enactment of the Consolidated Appropriations Act, 2021.

The first meeting of the Committee will be held on May 19, 2021 via webinar. The first meeting will commence with welcoming remarks and the agenda for the meeting will focus on the various issues related to all payer claims databases as well as a general discussion of the work plan for the report that must be submitted by the committee. Additional details about the agenda items and topics, as well as agenda updates, will be available at on the Committee's website: *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/state-all-payer-claims-databases-advisory-committee.* Written comments related to the work of the Committee may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Officer (see contact information noted above).

Dated: April 27, 2021.

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2021–09078 Filed 4–29–21; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request: NSF Research Experience and Mentoring Survey

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by June 29, 2021 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF Research Experience and Mentoring Survey.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Abstract:

The Research Experience and Mentoring (REM) Program supports the active involvement of research participants (RPs) that include high school students, Science, Technology, Engineering and Mathematics (STEM) teachers, undergraduate STEM students, faculty, and veterans, in hands-on research in order to bring participants into contact with STEM mentors and expose them to a summer research experience. Research participants are recruited as cohorts in order to facilitate mentoring and research activities, community building, and provide mutual student support. The main goals of the REM Program are to provide research experiences and mentored opportunities to STEM students and/or educators that may ultimately enhance their career and academic trajectories while enhancing NSF research projects by the Emerging Frontiers in Research and Innovation (EFRI) program and the Engineering Research Centers (ERC). The REM Program may also enable the building of long-term collaborative partnerships among EFRI- and ERC-supported researchers, community colleges, local four-year colleges, and local school districts.

A REM supplement of maximum of $110,000 over a 1-year period. Activities that are innovative and site-specific are encouraged. Effective REM programs typically have many of the following characteristics, which are provided here as general guidelines: mentorship training for researchers and affiliated graduate students or postdoctoral researchers; well-designed, introductory training for RPs; Six to ten weeks of summer research (full time); Continued mentorship of RPs throughout the academic year; Participation of RPs in research team meetings and topic-related conferences or workshops; and guidance for RPs in co-authoring publications and/or posters.

NSF is requesting OMB approval for the REM program to collect information from past and present research

participants and mentors. The REM program seeks to collect data from research participants and mentors to: (1) *Inform REM programming* (*e.g.,* to identify areas of growth); and (2) *conduct retrospective analysis of the REM program* to assess the success of REM historically.

Use of the Information: The information collected is primarily for the use of the NSF REM program to assess the success of the program and for informing decisions NSF will make regarding future programming and support provided to research participants.

Estimate burden on the public: Estimated at 180 hours for a one-time collection.

Respondents: All REM research participants and mentors will be invited to respond to the survey. The REM research participants include high school students, STEM teachers, undergraduate STEM students, faculty, and veterans.

Estimated number of respondents: 540 (representing a 60% response rate).

Average Time per Reporting: The online survey is comprised primarily of closed-ended questions and is designed to be completed by respondents in under 20 minutes.

Frequency: One-time collection.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Please submit one copy of your comments by only one method. All submissions received must include the agency name and collection name identified above for this information collection. Commenters are strongly encouraged to transmit their comments electronically via email. Comments, including any personal information provided become a matter of public record. They will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

Dated: April 27, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–09096 Filed 4–29–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0056]

Environmental Assessment and Finding of No Significant Impact of Independent Spent Fuel Storage Facilities Decommissioning Funding Plans

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing this notice regarding the issuance of a final Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) for its review and approval of the initial and updated decommissioning funding plans (DFPs) submitted by independent spent fuel storage installation (ISFSI) licensees for the ISFSIs listed in the ''Discussion'' section of this document.

DATES: The EA and FONSI referenced in this document are available on April 30, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0056 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–2021–0056. 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 *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, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tilda Liu, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 404–997–4730, email: *Tilda.Liu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering the approval of the initial and updated DFPs submitted by ISFSI licensees. The NRC staff has prepared a final EA and FONSI determination for each of the initial and updated ISFSI DFPs in accordance with the NRC regulations in Part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations (76 FR 35511). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation requires each holder of, or applicant for, a license under 10 CFR part 72 to submit a DFP for the NRC's review and approval. The DFP is to demonstrate the licensee's financial assurance, *i.e.,* that funds will be available to decommission the ISFSI. The NRC staff will later publish its financial analyses of the DFP submittals which will be available for public inspection in ADAMS.

II. Discussion

The table in this notice includes the plant name, docket number, licensee, and ADAMS Accession Number for the final EA and FONSI determination for each of the individual ISFSIs. The table also includes the ADAMS Accession Numbers for other relevant documents, including the initial and updated DFP

submittals. For further details with respect to these actions, see the NRC staff's final EA and FONSI determinations which are available for public inspection in ADAMS and at *https://www.regulations.gov* under Docket ID NRC–2021–0056. For additional direction on accessing information related to this document, see the **ADDRESSES** section of this document.

FINDING OF NO SIGNIFICANT IMPACT

Facility	Susquehanna steam electric station.
Docket No.	72–28.
Licensee	PPL Susquehanna, LLC; currently Susquehanna Nuclear, LLC.
Proposed Action	The NRC's review and approval of PPL Susquehanna LLC's initial and Susquehanna Nuclear LLC's updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of PPL Susquehanna LLC's initial and Susquehanna Nuclear LLC's updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of PPL Susquehanna LLC's initial and Susquehanna Nuclear LLC's updated DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of Susquehanna Steam Electric Station. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Susquehanna Steam Electric Station ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for the Susquehanna ISFSI DFP, dated May 24, 2016. ADAMS Accession No. ML16147A038. U.S. Nuclear Regulatory Commission. Request for Additional Information Regarding Susquehanna Nuclear, LLC's DFP Update for Susquehanna Steam Electric Station ISFSI, dated December 13, 2018. ADAMS Accession No. ML18352B184. Susquehanna Steam Electric Station DFP for the ISFSI, dated December 15, 2012. ADAMS Accession No. ML12352A171. Susquehanna Steam Electric Station DFP for the ISFSI, dated December 17, 2012. ADAMS Accession No. ML12363A021. Susquehanna Steam Electric Station ISFSI DFP, Updated, dated December 16, 2015. ADAMS Accession No. ML15350A071. Susquehanna Steam Electric Station ISFSI DFP, Updated dated January 8, 2016. ADAMS Accession No. ML16032A339. Susquehanna Steam Electric Station Response to Request for Additional Information Regarding ISFSI DFP, dated March 7, 2019. ADAMS Accession No. ML19066A132. U.S. Nuclear Regulatory Commission. Final EA and FONSI for PPL Susquehanna, LLC's, Susquehanna Nuclear, LLC's, and Allegheny Electric Cooperative, Inc.'s Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for Susquehanna Steam Electric Station ISFSI, dated April 21, 2021. ADAMS Package Accession No. ML21054A302.
Facility	Brunswick Steam Electric Plant.
Docket No.	72–06.
Licensee	Duke Energy Progress, LLC (Duke Energy).
Proposed Action	The NRC's review and approval of Duke Energy's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of Duke Energy's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize or changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Duke Energy's DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of the Brunswick Steam Electric Plant. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Brunswick Steam Electric Plant ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Request for Additional Information for Review of the DFPs for Duke Energy ISFSI, dated August 1, 2013. ADAMS Accession No. ML13214A228. U.S. Nuclear Regulatory Commission. Review of the Draft EA for the Brunswick Steam Electric Plant ISFSI DFP, dated August 10, 2015. ADAMS Accession No. ML15224B450. U.S. Nuclear Regulatory Commission. Request for Additional Information for Review of Duke Energy's DFP Update for H.B. Robinson Steam Electric Plant, Unit 2; Brunswick Steam Electric Plant; Catawba Nuclear Station; McGuire Nuclear Station; and H.B. Robinson Steam Electric Plant, Unit 2 ISFSIs, dated February 23, 2018. ADAMS Package Accession No. ML18057A216.

FINDING OF NO SIGNIFICANT IMPACT—Continued

	U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for Brunswick Steam Electric Plant, McGuire Nuclear Station, and H.B. Robinson Steam Electric Plant, Unit 2, ISFSIs DFPs, dated March 15, 2021. ADAMS Accession No. ML21071A069. Duke Energy. DFP for ISFSIs, dated December 13, 2012. ADAMS Accession No. ML12353A033. Duke Energy. DFP for ISFSIs, dated March 30, 2015. ADAMS Accession No. ML15089A394. Duke Energy. Response to NRC Request for Additional Information, dated August 1, 2013, Regarding the Decommissioning Funding Status Report for the ISFSIs, dated September 30, 2013. ADAMS Accession No. ML13275A203. Duke Energy. Response to Request for Additional Information Regarding Duke Energy's DFP Update for ISFSIs, dated March 28, 2018. ADAMS Accession No. ML18101A058. U.S. Nuclear Regulatory Commission. Final EA and FONSI for Duke Energy's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for Brunswick Steam Electric Plant ISFSI, dated April 21, 2021. ADAMS Package Accession No. ML21056A375.
Facility	Catawba Nuclear Station.
Docket No.	72–45.
Licensee	Duke Energy Progress, LLC (Duke Energy).
Proposed Action	The NRC's review and approval of Duke Energy's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of Duke Energy's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize or changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Duke Energy's DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of the Catawba Nuclear Station. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Catawba Nuclear Station ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Request for Additional Information for Review of the DFPs for Duke Energy ISFSI, dated August 1, 2013. ADAMS Accession No. ML13214A228. U.S. Nuclear Regulatory Commission. Review of the Draft EA for the Catawba Nuclear Station ISFSI DFP, dated August 10, 2015. ADAMS Accession No. ML15224A292. U.S. Nuclear Regulatory Commission. Request for Additional Information for Review of Duke Energy's DFP Update for Catawba Nuclear Station; Brunswick Steam Electric Plant; Catawba Nuclear Station; McGuire Nuclear Station; and Catawba Nuclear Station ISFSIs, dated February 23, 2018. ADAMS Package Accession No. ML18057A216. U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for Catawba Nuclear Station and Oconee Nuclear Station ISFSIs DFPs, dated March 15, 2021. ADAMS Accession No. ML21071A037. Duke Energy. DFP for ISFSIs, dated December 13, 2012. ADAMS Accession No. ML12353A033. Duke Energy. DFP for ISFSIs, dated March 30, 2015. ADAMS Accession No. ML15089A394. Duke Energy. Response to NRC Request for Additional Information, dated August 1, 2013, Regarding the Decommissioning Funding Status Report for the ISFSIs, dated September 30, 2013. ADAMS Accession No. ML13275A203. Duke Energy. Response to Request for Additional Information Regarding Duke Energy's DFP Update for ISFSIs, dated March 28, 2018. ADAMS Accession No. ML18101A058. U.S. Nuclear Regulatory Commission. Final EA and FONSI for Duke Energy's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for Catawba Nuclear Station ISFSI, dated April 21, 2021. ADAMS Package Accession No. ML21056A447.
Facility	McGuire Nuclear Station.
Docket No.	72–38.
Licensee	Duke Energy Progress, LLC (Duke Energy).
Proposed Action	The NRC's review and approval of Duke Energy's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of Duke Energy's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize or changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Duke Energy's DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of the McGuire Nuclear Station. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the McGuire Nuclear Station ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017. ADAMS Accession No. ML17135A062.

FINDING OF NO SIGNIFICANT IMPACT—Continued

	U.S. Nuclear Regulatory Commission. Request for Additional Information for Review of the DFPs for Duke Energy ISFSI, dated August 1, 2013. ADAMS Accession No. ML13214A228. U.S. Nuclear Regulatory Commission. Review of the Draft EA for the McGuire Nuclear Station ISFSI DFP, dated August 10, 2015. ADAMS Accession No. ML15224A810. U.S. Nuclear Regulatory Commission. Request for Additional Information for Review of Duke Energy's DFP Update for Catawba Nuclear Station; Brunswick Steam Electric Plant; Catawba Nuclear Station; McGuire Nuclear Station; and Catawba Nuclear Station ISFSIs, dated February 23, 2018. ADAMS Package Accession No. ML18057A216. U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for Brunswick Steam Electric Plant, McGuire Nuclear Station, and H.B. Robinson Steam Electric Plant, Unit 2, ISFSIs DFPs, dated March 15, 2021. ADAMS Accession No. ML21071A069. Duke Energy. DFP for ISFSIs, dated December 13, 2012. ADAMS Accession No. ML12353A033. Duke Energy. DFP for ISFSIs, dated March 30, 2015. ADAMS Accession No. ML15089A394. Duke Energy. Response to NRC Request for Additional Information, dated August 1, 2013, Regarding the Decommissioning Funding Status Report for the ISFSIs, dated September 30, 2013. ADAMS Accession No. ML13275A203. Duke Energy. Response to Request for Additional Information Regarding Duke Energy's DFP Update for ISFSIs, dated March 28, 2018. ADAMS Accession No. ML18101A058. U.S. Nuclear Regulatory Commission. Final EA and FONSI for Duke Energy's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for McGuire Nuclear Station ISFSI, dated April 21, 2021. ADAMS Package Accession No. ML21056A549.
Facility	Oconee Nuclear Station.
Docket Nos.	72–04, 72–40.
Licensee	Duke Energy Progress, LLC (Duke Energy).
Proposed Action	The NRC's review and approval of Duke Energy's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of Duke Energy's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize or changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.
Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Duke Energy's DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of the Oconee Nuclear Station. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the Oconee Nuclear Station ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Request for Additional Information for Review of the DFPs for Duke Energy ISFSI, dated August 1, 2013. ADAMS Accession No. ML13214A228. U.S. Nuclear Regulatory Commission. Review of the Draft EA for the Oconee ISFSIs DFP Dockets 72–04 and 72–40, dated August 10, 2015. ADAMS Accession No. ML15224B563. U.S. Nuclear Regulatory Commission. Request for Additional Information for Review of Duke Energy's DFP Update for Catawba Nuclear Station; Brunswick Steam Electric Plant; Catawba Nuclear Station; McGuire Nuclear Station; and Catawba Nuclear Station ISFSIs, dated February 23, 2018. ADAMS Package Accession No. ML18057A216. U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for Catawba Nuclear Station and Oconee Nuclear Station ISFSIs DFPs, dated March 15, 2021. ADAMS Accession No. ML21071A037. Duke Energy. DFP for ISFSIs, dated December 13, 2012. ADAMS Accession No. ML12353A033. Duke Energy. DFP for ISFSIs, dated March 30, 2015. ADAMS Accession No. ML15089A394. Duke Energy. Response to NRC Request for Additional Information, dated August 1, 2013, Regarding the Decommissioning Funding Status Report for the ISFSIs, dated September 30, 2013. ADAMS Accession No. ML13275A203. Duke Energy. Response to Request for Additional Information Regarding Duke Energy's DFP Update for ISFSIs, dated March 28, 2018. ADAMS Accession No. ML18101A058. U.S. Nuclear Regulatory Commission. Final EA and FONSI for Duke Energy's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for Oconee Nuclear Station ISFSI, dated April 21, 2021. ADAMS Package Accession No. ML21055A866.
Facility	H.B. Robinson Steam Electric Plant, Unit 2
Docket Nos.	72–03, 72–60.
Licensee	Duke Energy Progress, LLC (Duke Energy).
Proposed Action	The NRC's review and approval of Duke Energy's initial and updated DFPs submitted in accordance with 10 CFR 72.30(b) and (c).
Environmental Impact of Proposed Action	The NRC staff has determined that the proposed action, the review and approval of Duke Energy's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and (c), will not authorize or changes to licensed operations or maintenance activities, or result in changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of solid waste. Moreover, the approval of the initial and updated DFPs will not authorize any construction activity, facility modification, or other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action that will not have a significant impact on the environment.

FINDING OF NO SIGNIFICANT IMPACT—Continued

Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Duke Energy's DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of the H.B. Robinson Steam Electric Plant, Unit 2. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the H.B. Robinson Steam Electric Plant, Unit 2, ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Request for Additional Information for Review of the DFPs for Duke Energy ISFSI, dated August 1, 2013. ADAMS Accession No. ML13214A228. U.S. Nuclear Regulatory Commission. Review of the Draft EA for the Oconee ISFSIs DFP Dockets 72–04 and 72–40, dated August 10, 2015. ADAMS Accession No. ML15224B295. U.S. Nuclear Regulatory Commission. Request for Additional Information for Review of Duke Energy's DFP Update for Catawba Nuclear Station; Brunswick Steam Electric Plant; Catawba Nuclear Station; McGuire Nuclear Station; and Catawba Nuclear Station ISFSIs, dated February 23, 2018. ADAMS Package Accession No. ML18057A216. U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for Brunswick Steam Electric Plant, McGuire Nuclear Station, and H.B. Robinson Steam Electric Plant, Unit 2, ISFSIs DFPs, dated March 15, 2021. ADAMS Accession No. ML21071A069. Duke Energy. DFP for ISFSIs, dated December 13, 2012. ADAMS Accession No. ML12353A033. Duke Energy. DFP for ISFSIs, dated March 30, 2015. ADAMS Accession No. ML15089A394. Duke Energy. Response to NRC Request for Additional Information, dated August 1, 2013, Regarding the Decommissioning Funding Status Report for the ISFSIs, dated September 30, 2013. ADAMS Accession No. ML13275A203. Duke Energy. Response to Request for Additional Information Regarding Duke Energy's DFP Update for ISFSIs, dated March 28, 2018. ADAMS Accession No. ML18101A058. U.S. Nuclear Regulatory Commission. Final EA and FONSI for Duke Energy's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for H.B. Robinson Steam Electric Plant, Unit 2, ISFSI, dated April 21, 2021. ADAMS Package Accession No. ML21056A261.

Dated: April 27, 2021.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–09044 Filed 4–29–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91671; File No. SR–BX–2021–015]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 2, ''BX Options Market- Fees and Rebates''

April 26, 2021.

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 April 13, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by 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 BX Options 7, Section 2, ''BX Options Market- Fees and Rebates.''

The Exchange originally filed the proposed pricing changes on March 29, 2021 (SR–BX–2021–010). On April 13, 2021, the Exchange withdrew that filing and submitted this filing.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on April 1, 2021.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/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 BX's Pricing Schedule at Options 7, Section 2, ''BX Options Market-Fees and Rebates.'' The Exchange proposes to amend Options 7, Section 2(1) to qualify the Customer Non-Penny Symbol Maker Rebate and add certain rule text to make clear the manner in which Options 7, Section 2(1) pricing applies today. The Exchange also proposes to amend Options 7, Section 2(2) to amend the pricing for the Opening Cross. Each change will be described below.

Options 7, Section 2(1)

Today, Customers are paid a Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party. Customers are assessed a Non-Penny Symbol Taker Fee of $0.65 per contract for removing liquidity in Non-Penny Symbols, regardless of counterparty.

The Exchange proposes to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract. The Exchange proposes to continue to pay a Customer Non-Penny Symbol Maker Rebate of $0.90 per contract unless the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

contra-side is also a Customer, in which case the Exchange will pay a reduced Customer Non-Penny Symbol Market Rebate of $0.45 per contract if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity in that month. The aforementioned calculation of 25% will not consider orders within the Opening Process [3] per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, or orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13. The Exchange proposes to add this rule text to Options 7, Section 2(1) at new note ''3''.

The Exchange also proposes to amend Options 7, Section 2(1) to add a new note ''*'' which makes clear that orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13 are not subject to Options 7, Section 2(1) pricing, instead, these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively. The Exchange believes that this note will guide Participants to the correct pricing within Options 7, Section 2. This new note ''*'' does not represent a substantive change. The proposed new note ''*'' is intended to serve as a guidepost to Participants referring to the BX Pricing Schedule.

Options 7, Section 2(2)

As noted above, the Exchange proposes to amend the title of Options 7, Section 2(2) to align with the title of Options 3, Section 8. The Exchange also proposes to add a citation to the rule for the Opening Process. The current title, ''Opening Cross'' would be amended to state ''Opening Process per Options 3, Section 8.'' The Exchange also proposes to change the phrase ''Opening Cross'' to ''Opening Process'' throughout Options 7, Section 2(2) as well. These amendments are non-substantive.

Currently, Options 7, Section 2(2) provides,

All orders executed in the Opening Cross:

Customer orders will receive the Rebate to Remove Liquidity during the Exchange's Opening Cross, unless the contra-side is also a Customer (in which case no Fee to Remove Liquidity is assessed and no Rebate to Remove Liquidity is received). Lead Market Makers, BX Options Market Makers,[4] Non-Customers, and Firms will be assessed the Fee to Remove Liquidity during the Exchange's Opening Cross.

The Exchange recently filed to amend the pricing within Options 7, Section 2(1) to remove the current fees, rebates and tier schedules applicable to Penny Symbols and Non-Penny Symbols and replace it with a new maker/taker fee structure.[5] Currently, Options 7, Section 2(2) continues to reference pricing which was removed with the Prior Fee Change. As the current pricing refers to Rebates to Remove Liquidity and Fees to Remove Liquidity which no longer exist on the Pricing Schedule within Options 7, Section 2(1), the Exchange did not assess any Participant a fee nor pay a rebate in March 2021 with respect to the Opening Cross.

At this time, the Exchange proposes to amend Options 7, Section 2(2) to provide,

All orders executed in the Opening Process:

Customer orders will receive the Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate will not be paid and a Taker Fee will not be assessed. Lead Market Makers, Market Makers, Non-Customers, and Firms will be assessed the Taker Fee during the Exchange's Opening Process and will receive Maker Rebates.

This proposed new rule text would continue to pay Customers a rebate during the Exchange's Opening Process, unless the Customer order is contra another Customer order as explained in greater detail below.

Penny Symbols

Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Penny Symbol Rebate to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm which ranged from $0.00 to $0.35 per contract.[6] The proposed new pricing which would be applicable to the Exchange's Opening Process would pay Customers a Maker Rebate of $0.30 per contract, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Penny Symbol Customer Maker Rebate of $0.30 per contract would pay Participants that previously qualified for now defunct Tiers 1 and 2 [7] a higher Customer rebate than was previously paid. Participants that qualified for now defunct Tier 3 would receive a lower Customer rebate than was previously paid, provided the contra-side was not a Customer. Previously, during the Opening Cross, no Rebate was paid to Remove Liquidity when a Customer was contra another Customer. With the proposed pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed.

Previously, during the Opening Cross, Lead Market Makers and Options Market Makers were assessed the Fee to Remove Liquidity while Lead Market Makers and Market Makers paid the Penny Symbol Fee to Remove Liquidity when trading against a Customer that ranged from $0.39 to $0.30 per contract.[8] Previously, during the Opening Cross, Lead Market Makers and Market Makers paid a Penny Symbol Fee to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm of $0.46 per contract, regardless of tier.[9] With the proposed new Opening

[3] The Exchange proposes to rename ''Opening Cross'' within Options 7, Section 2(2) as 'Opening Process.'' Hereafter, the Exchange will refer to Options 7, Section 2(2) as the Opening Process and the previous process as the Opening Cross throughout this rule change.

[4] The Prior Fee Change renamed ''BX Options Market Maker'' as ''Market Maker.''

[5] *See* Securities Exchange Act Release No. 91473 (April 5, 2021) 86 FR 18562 (April 9, 2021) (April 9, 2021) [sic] (SR–BX–2021–009) (''Prior Fee Change'').

[6] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received no Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received a $0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received a $0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

[7] The Prior Fee Change eliminated Tiers 1–3 described herein.

[8] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.30 per contract in Tier 3.

[9] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV

Continued

Process pricing, the Penny Symbol Taker Fee for Lead Market Maker and Market Maker orders of $0.46 per contract would be higher than the prior Lead Market Maker and Market Maker tiered Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranged from $0.39 to $0.30 per contract and would be the same as the previous Lead Market Maker and Market Maker tiered Penny Symbol Fees to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, Options Market Maker or Firm of $0.46 per contract regardless of tier. With the proposed new pricing, Lead Market Makers and Market Makers would not receive Maker Rebates during the Opening Process.

Previously, during the Opening Cross, Non-Customers and Firms were assessed the Fee to Remove Liquidity. The prior Penny Symbol Fee to Remove Liquidity was a flat fee of $0.46 per contract. The proposed new Penny Symbol Taker Fee of $0.46 per contract would be the same as the prior Penny Symbol Fee to Remove Liquidity of $0.46 per contract. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process.

Non-Penny Symbols

Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Non-Penny Symbol Customer Rebate to Remove Liquidity of $0.80 per contract,[10] regardless of the tier and regardless of the contra-party. The proposed new pricing would similarly pay Customers a Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Non-Penny Symbol Customer Maker Rebate of $0.90 per contract during the Opening Process would be higher than the prior rebates, provided the contra-side is not a Customer. During the Opening Process, no Rebate to Remove Liquidity was paid when a Customer was contra another Customer. With the proposed new pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed.

Previously, during the Opening Cross, Lead Market Makers and BX Options Market Makers were assessed the Fee to Remove Liquidity while Lead Market Makers and Market Makers paid an $0.89 per contract Non-Penny Fee to Remove Liquidity when the Lead Market Maker or Market Maker traded with any market participant other than a Customer.[11] Previously, during the Opening Cross, if the contra-party was a Customer, the Lead Market Maker and Market Maker were charged a Fee to Remove Liquidity that ranged from $0.89 to $0.60 per contract depending on the volume tier achieved.[12] The proposed new Taker Fee of $1.10 per contract for removing liquidity for Lead Market Makers and Market Makers in Non-Penny Symbols, during the Opening Process, regardless of contra-party would be higher than the prior fees assessed to Lead Market Makers and Market Makers for removing liquidity in Non-Penny Symbols. With the proposed new pricing, during the Opening Process, Lead Market Makers and Market Makers would not receive Maker Rebates.

Previously, during the Opening Cross, Non-Customers and Firms were assessed the Non-Penny Symbol Fee to Remove Liquidity. During the Opening Cross, the prior Non-Penny Symbol Fee to Remove Liquidity was a flat fee of $0.89 per contract. During the Opening Process, the proposed new Non-Penny Symbol Taker Fee of $1.10 per contract for removing liquidity for Non-Customers and Firms in Non-Penny Symbols, would be higher than the prior Fee to Remove Liquidity. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process.

Options 7, Section 2(5)

The Exchange proposes to add the words ''per Options 3, Section 13'' at the end of the title to Options 7, Section 2(5) to provide the citation to the BX Price Improvement Auction rule. This amendment is non-substantive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] 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 Exchange's proposed changes to its Pricing Schedule 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'. . . .'' [15]

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

contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 3.

[10] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 3.

[11] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

[12] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid an $0.60 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

[13] 15 U.S.C. 78 f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

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.'' [16]

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 sixteen 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 and market share relative to its competitors.

Options 7, Section 2(1)

The Exchange's proposal to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party and, instead, pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity [17] in that month is reasonable. BX's current $0.90 per contract flat Customer Non-Penny Symbol Maker Rebate is the highest simple order base rebate paid that does not consider volume or contra-party.[18] Other exchanges have higher simple order rebates, provided certain volume criteria are met.[19] The Exchange's proposal to add a volume consideration for the ratio of Customer to Customer orders as compared to total Participant volume which adds Non-Penny Symbol liquidity in order to receive the $0.90 per contract Customer Non-Penny Symbol rebate as compared to the reduced $0.45 per contract rebate is reasonable. The Exchange currently assess a $0.65 per contract Customer Non-Penny Taker Fee, the lowest BX Taker Fee for Non-Penny Symbols,[20] and, currently, the Exchange pays the highest Customer Maker Rebate of $0.90 per contract. The Exchange offers Customers the highest Non-Penny Maker Rebate on BX by assessing higher Non-Penny Taker Fees to Non-Customers.[21] To the extent a Participant submits a Non-Penny Customer order to add liquidity which interacts with a Non-Penny Customer order that removes liquidity, both Participants benefit from the higher Non-Penny Maker Rebate and lower Non-Penny Taker Fee. The Exchange's intention for assessing Customer orders with the reduced Non-Penny Taker Fee was designed to bolster interaction with Non-Customer participants. Today, Non-Penny Customer orders which add liquidity have priority [22] ahead of Non-Penny Non-Customer orders and, therefore, the Exchange's intention to enhance Non-Customer liquidity is subverted when a Non-Penny Customer order transacts with another Non-Penny Customer order. As a result, when Non-Penny Customers interact with other Non-Penny Customer orders more than by happenstance, the Exchange believes it is reasonable to pay Customer orders which add liquidity a lower rebate. The Exchange notes that Participants do occasionally submit Non-Penny Customer orders which add liquidity in Non-Penny Symbols to the order book that trade against Non-Penny Customer orders that remove liquidity in Non-Penny Symbols. The Exchange believes that type of behavior occurs, by happenstance, a small percentage of the time in a given month. Therefore, the Exchange selected 25% as a number to demarcate the point at which a Participant should receive the lower Customer Non-Penny Symbol Maker Rebate of $0.45 per contract because it does not believe that the type of behavior outlined herein should occur more than 25% of a Participant's total Customer Non-Penny Symbol volume unless the trading behavior intended. Further, the Exchange believes that although Customer orders may receive lower rebates if they transact the requisite number of Customer-to Customer trades, the Exchange's rebate of $0.45 per contract remains competitive and equal to or greater than the rebates that other Participants are afforded.[23] The Exchange's proposal to exclude orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13 from the aforementioned calculation of 25% is reasonable because orders executed in the Opening Process, orders that generate an order exposure alert, and orders transacted in PRISM have separate pricing within Options 7, Sections 2(2), (4) and (5), respectively. The Exchange's proposal to exclude orders executed in the Opening Process, orders that generate an order exposure alert, and orders transacted in PRISM from the aforementioned calculation of 25% is equitable and not unfairly discriminatory as the Exchange will

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[17] As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13.

[18] BOX Exchange LLC (''BOX'') pays no Non-Penny Interval Class Public Customer Maker Rebate. See BOX's Fee Schedule at Section I, A. Cboe Exchange, Inc. (''Cboe'') pays a Non-Penny Class rebate to customers of $0.18 per contract only if the original order is <100 contracts and removing liquidity. See Cboe's Fee Schedule. Cboe C2 Exchange, Inc. (''C2'') pays a Non-Penny Class rebate to customers of $0.80 per contract to transactions which add liquidity. See C2's Fee Schedule. Cboe BZX Exchange, Inc. (''CboeBZX'') pays Non-Penny Program Securities rebates to customers which range from $0.85 to $1.06 per contract to transactions which add liquidity. See CboeBZX's Fee Schedule. Cboe EDGX Exchange, Inc. (''CboeEDGX'') pays Non-Penny Program Securities rebates to customers which range from $0.01 to $0.21 based on customer volume tiers. See CboeEDGX's Fee Schedule. Miami International Securities Exchange, LLC (''MIAX'') pays no customer rebate for non-penny classes. *See* MIAX's Fee Schedule. MIAX PEARL, LLC (''PEARL'') pays Priority Customer Non-Penny Classes Maker Rebates which range from $0.85 to $1.04 based on volume. *See* PEARL's Fee Schedule. MIAX Emerald, LLC (''EMERALD'') pays Priority Customer Maker Rebates which range from $0.43 to $0.53, except that SPY, QQQ and IWM rebates are $0.45 and Priority Customer Simple Order rebates when contra is an Affiliated Market Maker are $0.49. *See* EMERALD's Fee Schedule. NYSE Arca, Inc. (''NYSEArca'') pays a Customer a $0.75 rebate to post liquidity unless contra a lead market maker, in which case no rebate is paid. *See* NYSE Arca Options Fees and Charges. NYSE American LLC (''NYSEAmerican'') pays no Customer rebates. *See* NYSE American Options Fee Schedule. The Nasdaq Stock Market LLC (''NOM'') pays an $0.80 per contract Customer Non-Penny Symbol Rebate and in some cases $1.00, or $1.05 if other criteria are met. *See* NOM's Pricing Schedule. Nasdaq Phlx LLC (''Phlx'') pays Customer Non-Penny rebates which range from $0.00 to $0.27. See Phlx's Pricing Schedule. Nasdaq ISE, LLC ('ISE'') pays no Non-Penny Priority Customer rebates. See ISE's Pricing Schedule. Nasdaq GEMX, LLC (''GEMX'') pays Priority Customer Non-Penny Symbol Maker Rebates which range from $0.25 to $0.70. See GEMX's Pricing Schedule. Nasdaq MRX, LLC ('MRX'') pays no Priority Customer Non-Penny Symbol rebates. See MRX's Pricing Schedule.

[19] *Id.*

[20] Non-Customer orders are assessed a $1.10 Non-Penny Symbol Taker Fee.

[21] A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker. See BX Options 7, Section 1.

[22] *See* Options 3, Section 10.

[23] Today, Lead Market Makers are paid $0.45 per contract Non-Penny Symbol Maker Rebates and Market Maker are paid $0.40 per contract Non-Penny Symbol Maker Rebates. Firms and Non-Customers are not eligible for Non-Penny Symbol Maker Rebates and instead are charged a Maker Fee of $0.45 per contract.

uniformly exclude these orders from the aforementioned calculation of 25%.

The Exchange's proposal to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party and, instead, pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity [24] in that month is equitable and not unfairly discriminatory. The Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate.

The Exchange's proposal to pay a lower $0.45 per contract Customer Non-Penny Symbol Maker Rebate when a Participant executes against a Customer more than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month is equitable and not unfairly discriminatory. The Exchange noted above that when Non-Penny Customers interact with other Non-Penny Customer orders more than by happenstance, the Exchange believes it is reasonable to pay Customer orders which add liquidity a lower rebate. The Exchange also noted that Participants do occasionally submit Non-Penny Customer orders which add liquidity in Non-Penny Symbols to the order book that trade against Non-Penny Customer orders that remove liquidity in Non-Penny Symbols. The Exchange believes that type of behavior occurs, by happenstance, a small percentage of the time in a given month. Therefore, the Exchange believes that it is equitable and not unfairly discriminatory to pay a lower rebate to Non-Penny Customer orders which interact with other Non-Penny Customer orders more than by happenstance, because the Exchange's intention to enhance Non-Customer liquidity is subverted. In addition, the Exchange notes that Customers may continue to receive the highest Non-Penny Symbol Maker Rebate paid by BX,[25] provided they do not execute greater than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month.

The Exchange's proposal to amend Options 7, Section 2(1) to add a new note ''*'' which makes clear that orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13 are not subject to Options 7, Section 2(1) pricing, rather, these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively, is reasonable, equitable and not unfairly discriminatory. The Exchange believes that this rule text will be informative in guiding Participants to the correct pricing within Options 7, Section 2 which applies to a specific transaction. This new note ''*'' does not represent a substantive change. The proposed new note ''*'' is intended to serve as a guidepost to Participants referring to the BX Pricing Schedule.

Options 7, Section 2(2)

The Exchange's proposal to amend the title of Options 7, Section 2(2) from ''Opening Cross'' to ''Opening Process per Options 3, Section 8,'' as well as similar changes throughout Options 7, Section 2(2), is reasonable, equitable and not unfairly discriminatory. The amendment is non-substantive. The proposed title will align with the title of Options 3, Section 8.

The Exchange's proposal to amend the pricing within Options 7, Section 2(2) is reasonable, equitable and not unfairly discriminatory for the below reasons.

Penny Symbols

Customers

The Exchange believes that the proposed Opening Process Customer pricing in Penny Symbols is reasonable. Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Penny Symbol Rebate to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm which ranged from $0.00 to $0.35 per contract.[26] The proposed new pricing which would be applicable to the Exchange's Opening Process would pay Customers a Maker Rebate of $0.30 per contract, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Penny Symbol Customer Maker Rebate of $0.30 per contract would pay Participants that previously qualified for now defunct Tiers 1 and 2 [27] a higher Customer rebate than was previously paid. Participants that qualified for now defunct Tier 3 would receive a lower Customer rebate than was previously paid, provided the contra-side was not a Customer. Previously, during the Opening Cross, no Rebate was paid to Remove Liquidity when a Customer was contra another Customer. With the proposed pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed. The Exchange believes that the proposed pricing will continue to attract order flow to BX because, during the Opening Process, unlike other market participants Customers will continue to receive rebates, except if the Customer order trades against another Customer order. Furthermore, Customers would not be assessed a fee during the Opening Process. During the Opening Process, the Exchange desires to attract Customer liquidity, similar to intra-day, and therefore continuing to pay Customer orders a rebate, provided the Customer order is not contra another customer order is reasonable. Also, during the Opening Process, when a Customer order is contra another Customer order, the Exchange notes that neither Customer order is assessed a Taker Fee. The Exchange believes that it is reasonable to not pay each Customer order a Maker Rebate in these circumstances when no Taker Fees are being assessed to those Customer orders. Finally, the Exchange notes that the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from trading intra-day, where Participants have an opportunity to interact with the order book. Also, the Exchange believes that the Non-Penny Symbol Customer pricing during the Opening Process remains competitive.[28]

[24] As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13.

[25] *Id.*

[26] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received no Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received a $0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received a $0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

[27] The Prior Fee Change eliminated Tiers 1–3 described herein.

[28] NYSEArca currently assesses Customers a Take Liquidity fee of $0.49 per contract in Penny Issues. *See* NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions—Per Contract.

Lead Market Makers and Market Makers

The Exchange believes that the proposed Opening Process Lead Market Maker and Market Maker pricing in Penny Symbols is reasonable. Previously, during the Opening Cross, Lead Market Makers and Options Market Makers were assessed the Fee to Remove Liquidity. During the Opening Cross, Lead Market Makers and Market Makers previously paid a Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranged from $0.39 to $0.30 per contract [29] and paid a Penny Symbol Fee to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm of $0.46 per contract, regardless of tier.[30] With the proposed new Opening Process pricing, the Penny Symbol Taker Fee for Lead Market Maker and Market Maker orders of $0.46 per contract would be higher than the prior Lead Market Maker and Market Maker tiered Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranged from $0.39 to $0.30 per contract and would be the same as the current Lead Market Maker and Market Maker tiered Penny Symbol Fees to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, Options Market Maker or Firm of $0.46 per contract regardless of tier. With the proposed new pricing, Lead Market Makers and Market Makers would not receive Maker Rebates during the Opening Process. The Exchange believes its proposed pricing will continue to attract liquidity because the pricing remains competitive with other pricing.[31]

Non-Customers and Firms

The Exchange believes that the proposed Opening Process Non-Customer and Firm pricing in Penny Symbols is reasonable. Previously, during the Opening Cross, Non-Customers and Firms were assessed the Fee to Remove Liquidity. The prior Penny Symbol Fee to Remove Liquidity was a flat fee of $0.46 per contract. The proposed new Penny Symbol Taker Fee of $0.46 per contract would be the same as the prior Penny Symbol Fee to Remove Liquidity of $0.46 per contract. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process. The Exchange believes its proposed pricing will continue to attract liquidity because the pricing remains competitive with other pricing.[32]

Non-Penny Symbols

Customers

The Exchange believes that the proposed Opening Process Customer pricing in Non-Penny Symbols is reasonable. Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Non-Penny Symbol Customer Rebate to Remove Liquidity of $0.80 per contract,[33] regardless of the tier and regardless of the contra-party. The proposed new pricing would similarly pay Customers a Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Non-Penny Symbol Customer Maker Rebate of $0.90 per contract during the Opening Process would be higher than the prior rebates, provided the contra-side is not a Customer. Previously, during the Opening Cross, no Rebate to Remove Liquidity was paid when a Customer was contra another Customer. With the proposed new pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed. The Exchange believes that the proposed pricing will continue to attract order flow to BX because, during the Opening Process, unlike other market participants Customers will continue to receive rebates, except if the Customer is contra another Customer order, and Customers would not be assessed a fee during the Opening Process. The Exchange believes that it is reasonable to not pay a Customer a rebate during the Opening Process if the Customer is contra another Customer because unlike intra-day trading where Participants have the opportunity to interact with the order book, the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from the trading intra-day. Also, the Exchange believes that the Non-Penny Symbol Customer pricing during the Opening Process remains competitive.[34]

Lead Market Makers and Market Makers

The Exchange believes that the proposed Opening Process Lead Market Maker and Market Maker pricing in Non-Penny Symbols is reasonable. Previously, during the Opening Cross, Lead Market Makers and BX Options Market Makers were assessed the Fee to Remove Liquidity. Previously, during the Opening Cross, Lead Market Makers and Market Makers paid an $0.89 per contract Non-Penny Fee to Remove Liquidity when the Lead Market Maker or Market Maker traded with any market participant other than a Customer.[35] Previously, during the Opening Cross, if the contra-party was a Customer, the Lead Market Maker and Market Maker were charged a Fee to Remove Liquidity that ranged from $0.89 to $0.60 per contract depending on the volume tier

[29] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.30 per contract in Tier 3.

[30] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 3.

[31] NYSEArca currently assesses LMMs and NYSE Arca Maker Makers a Take Liquidity fee of $0.50 per contract in Penny Issues. *See* NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions—Per Contract.

[32] NYSEArca assesses all market participants except Customers a Take Liquidity fee of $0.50 per contract in Penny Issues. *See* NYSEArca's Options Fees and Charges, Transaction Fee for Electronic Executions—Per Contract.

[33] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 3.

[34] NYSEArca currently assesses Customers a Take Liquidity fee of $1.10 per contract in Non-Penny Issues. *See* NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions—Per Contract.

[35] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

achieved.[36] The proposed new Taker Fee of $1.10 per contract for removing liquidity for Lead Market Makers and Market Makers in Non-Penny Symbols, during the Opening Process, regardless of contra-party would be higher than the prior fees assessed to Lead Market Makers and Market Makers for removing liquidity in Non-Penny Symbols. With the proposed new pricing, during the Opening Process, Lead Market Makers and Market Makers would not be subject to Maker Rebates. The Exchange believes that the Non-Penny Symbol Lead Market Maker and Market Maker pricing during the Opening Process remains competitive.[37]

Non-Customers and Firms

The Exchange believes that the proposed Opening Process Non-Customer and Firm pricing in Non-Penny Symbols is reasonable. Previously, during the Opening Cross, Non-Customers and Firms were assessed the Non-Penny Symbol Fee to Remove Liquidity. During the Opening Cross, the prior Non-Penny Symbol Fee to Remove Liquidity was a flat fee of $0.89 per contract. During the Opening Process, the proposed new Non-Penny Symbol Taker Fee of $1.10 per contract for removing liquidity for Non-Customers and Firms in Non-Penny Symbols would be higher than the prior Fee to Remove Liquidity. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process. The Exchange believes that the Non-Penny Symbol Non-Customer and Firm pricing during the Opening Process remains competitive.[38]

The Exchange's proposal to amend the Opening Process pricing is equitable and not unfairly discriminatory. During the Opening Process, Customers will continue to receive rebates, unlike other market participants, except if the Customer is contra another Customer order. Also, unlike other Participants, Customers would not be assessed a fee during the Opening Process. The Exchange believes that it is equitable and not unfairly discriminatory to pay rebates to Customers, provided they are not contra another customer, and not assess fees to Customers, because unlike other Participants, Customer liquidity benefits all market participants by offering additional trading opportunities. Additionally, Market Makers seeking to interact with Customer liquidity are incentivized to tighten quote spreads to interact with the order flow. With respect to Customer orders during the Opening Process that are contra other Customer orders, the Exchange would not pay the Customer a rebate, nor would the Customer be assessed a fee, unlike other Non-Customer Participants who would pay a fee during the Opening Process. While the Exchange desires to attract Customer liquidity during the Opening Process, unlike intra-day trading where Participants have the opportunity to interact with the order book, the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from the trading intra-day. Finally, the Exchange's proposal will uniformly assess all Non-Customers the same Taker Fee and pay no Maker Rebates to these Participants during the Opening Process.

Options 7, Section 2(5)

The Exchange's proposal to add the words ''per Options 3, Section 13'' at the end of the title to Options 7, Section 2(5) is reasonable, equitable and not unfairly discriminatory. This non-substantive amendment simply provides the citation to the BX Price Improvement Auction rule.

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. 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.

Intra-market Competition

Options 7, Section 2(1)

The Exchange's proposal to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party and, instead, pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity [39] in that month does not impose an undue burden on competition as the Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate. The Exchange's proposal to exclude orders executed in the Opening Process, orders that generate an order exposure alert, and orders transacted in PRISM from the aforementioned calculation of 25% does not impose an undue burden on competition as the Exchange will uniformly exclude these orders from the aforementioned calculation of 25%.

The Exchange's proposal to pay a lower $0.45 per contract Customer Non-Penny Symbol Maker Rebate when a Participant executes against a Customer more than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month does not impose an undue burden on competition. Customers may continue to be able to achieve the highest Non-Penny Symbol Maker Rebate paid by BX,[40] provided they do not execute greater than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month.

The Exchange's proposal to amend Options 7, Section 2(1) to add a new note ''*'' which makes clear that orders executed in the Opening Process per Options 3, Section 8, orders that

[36] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid a $0.60 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

[37] NYSEArca assesses LMMs and NYSE Arca Market Makers a Take Liquidity fee of $1.10 per contract in Non-Penny Issues. *See* NYSEArca Options Fees and Charges.

[38] NYSEArca assesses all market participants except Customers a Take Liquidity fee of $1.10 per contract in Non-Penny Issues. *See* NYSEArca Options Fees and Charges.

[39] As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13.

[40] *Id.*

generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13 are not subject to Options 7, Section 2(1) pricing, rather these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively, does not impose an undue burden on competition. This amendment is non-substantive. The Exchange believes that this rule text will be informative in guiding Participants to the correct pricing within Options 7, Section 2 which applies to a specific transaction.

Options 7, Section 2(2)

The Exchange's proposal to amend the Opening Process pricing does not impose an undue burden on competition. During the Opening Process, Customers would continue to receive rebates, unlike other market participants, except if the Customer is contra another Customer order. Also, unlike other Participants, Customers would not be assessed a fee during the Opening Process. Paying rebates to Customers, provided they are not contra another customer, and not assessing fees to Customers does not impose an undue burden on competition, because unlike other Participants, Customer liquidity benefits all market participants by offering additional trading opportunities. Additionally, Market Makers seeking to interact with Customer liquidity are incentivized to tighten quote spreads to interact with the order flow. With respect to Customer orders during the Opening Process that are contra other Customer orders, the Exchange would not pay the Customer a rebate, nor would the Customer be assessed a fee, unlike other Non-Customer Participants who would pay a fee during the Opening Process. While the Exchange desires to attract Customer liquidity during the Opening Process, unlike intra-day trading where Participants have the opportunity to interact with the order book, the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from the trading intra-day. Finally, the Exchange's proposal will uniformly assess all Non-Customers the same Taker Fee and pay no Maker Rebates to these Participants during the Opening Process.

Options 7, Section 2(5)

The Exchange's proposal to add the words ''per Options 3, Section 13'' at the end of the title to Options 7, Section 2(5) does not impose an undue burden on competition. This non-substantive rule change simply provides the citation to the BX Price Improvement Auction rule.

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[41] and paragraph (f) of Rule 19b–4 thereunder.[42]

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2021–015 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–BX–2021–015. 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 (*http://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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2021–015 and should be submitted on or before May 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–09021 Filed 4–29–21; 8:45 am]

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[41] 15 U.S.C. 78s(b)(3)(A)(ii).

[42] 17 CFR 240.19b–4(f)(2).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91677; File No. SR–NASDAQ–2021–021]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend The Nasdaq Options Market's Pricing Schedule at Options 7, Section 1, General Provisions, and Options 7, Section 2, Nasdaq Options Market—Fees and Rebates

April 26, 2021.

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 April 13, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Nasdaq Options Market's (''NOM'') Pricing Schedule at Options 7, Section 1, General Provisions, and Options 7, Section 2, Nasdaq Options Market—Fees and Rebates.

The Exchange originally filed the proposed pricing changes on April 1, 2021 (SR–NASDAQ–2021–016). On April 9, 2021, the Exchange withdrew SR–NASDAQ–2021–016 and filed SR–NASDAQ–2021–019. The Exchange is withdrawing SR–NASDAQ–2021–019 and filing this rule change on April 13, 2021.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/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 NOM's Pricing Schedule at Options 7, Section 1, General Provisions. The Exchange proposes to relocate certain rule text concerning equity tier calculations from current Options 7, Section 2(4) to Options 7, Section 1 and add a new defined term to Options 7, Section 1. The Exchange proposes to amend Options 7, Section 2(1) to add rule text to make clear the applicable pricing and also amend the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Symbols. The Exchange proposes to amend Options 7, Section 2(2) to amend a title. Finally, the Exchange proposes to amend Options 7, Section 2(3) regarding Nasdaq BX Inc.'s (''BX'') Routing Fees. Each change shall be described below.

Options 7, Section 1

The Exchange proposes to define the term ''Non-Customer'' within Options 7, Section 1. The Exchange proposes to provide, ''The term ''Non-Customer'' applies to transactions for the accounts of NOM Market Makers, Non-NOM Market Makers, Firms, Professionals, Broker-Dealers and JBOs.'' This defined term will bring greater clarity to NOM's Options 7 Rules. The term ''Non-Customer'' is currently utilized within the fees for routing at Options 7, Section 2(3). The addition of this defined term does not amend the manner in which the Exchange currently applies the term with respect to its Routing Fees. The term ''Customer'' [3] is currently defined and this term applies to Participants that are not customers. This change would be non-substantive.

Options 7, Section 2

Currently, the below rule text is located within Options 7, Section 2(4).

(a) For purposes of determining equity tier calculations under this section, any day that the market is not open for the entire trading day will be excluded from such calculation.

(b) Removal of Days for Purposes of Options Pricing Tiers:

(i)

(A) Any day that the Exchange announces in advance that it will not be open for trading will be excluded from the options tier calculations set forth in its Pricing Schedule; and (B) any day with a scheduled early market close (''Scheduled Early Close'') may be excluded from the options tier calculations only pursuant to paragraph (iii) below.

(ii) The Exchange may exclude the following days (''Unanticipated Events'') from the options tier calculations only pursuant to paragraph (iii) below, specifically any day that: (A) The market is not open for the entire trading day, (B) the Exchange instructs Participants in writing to route their orders to other markets, (C) the Exchange is inaccessible to Participants during the 30-minute period before the opening of trade due to an Exchange system disruption, or (D) the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours.

(iii) If a day is to be excluded as a result of paragraph (i)(B) or (ii) above, the Exchange will exclude the day from any Participant's monthly options tier calculations as follows:

(A) the Exchange may exclude from the ADV calculation any Scheduled Early Close or Unanticipated Event; and

(B) the Exchange may exclude from any other applicable options tier calculation provided for in its Pricing Schedule (together with (ii)(A), ''Tier Calculations'') any Scheduled Early Close or Unanticipated Event.

Provided, in each case, that the Exchange will only remove the day for Participants that would have a lower Tier Calculation with the day included.

This rule text describes the equity tier calculations when excluding certain days. The Exchange is relocating this rule text, without change, to Options 7, Section 1, General Provisions. The Exchange believes that this information is better suited to Section 1 along with other general information because the rule applies to Options 7 pricing.

The Exchange proposes to amend the qualification for the Tier 3 Rebate to Add Liquidity in Penny Symbols. Fees and Rebates for Execution of Contracts on The Nasdaq Options Market are as follows:

[3] The NOM Market Maker Rebate to Add Liquidity in Penny Symbols will be paid per the highest tier achieved below.

MONTHLY VOLUME	
Tier 1	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month.
Tier 2	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month.

[3] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(a)(47)).

MONTHLY VOLUME—Continued

Tier 3	Participant: (a) Adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month: Or (b)(1) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.70% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market, (2) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.18% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (3) executes greater than 0.01% of CV via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within The Nasdaq Stock Market Closing Cross in the same month.
Tier 4	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 5	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market.
Tier 6	Participant: (a)(1) Adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity.

* ''Total Volume'' shall be defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Symbols and/or Non-Penny Symbols which either adds or removes liquidity on NOM.

NOM proposes to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols to require:

Participant: (a) Adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month: Or (b)(1) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market, (2) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (3) executes greater than 0.01% of CV via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within The Nasdaq Stock Market Closing Cross in the same month.

This proposal would amend the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(1) by requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market, an increase from 0.70%. Also, this proposal would amend the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(2) by requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, a decrease from 0.18%. The final portion of the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(3)[4] is not being amended. Although the first component of the qualification requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs is being increased and the second component requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs is being decreased, the Exchange believes that these amendments may incentivize additional Market Makers to transact greater volume on The Nasdaq Stock Market in order to qualify for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols. The Exchange believes that Tier 3 continues to incentivize Participants to direct additional order flow to NOM and The Nasdaq Stock Market.

NOM is not proposing to amend the corresponding Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols.

The Exchange proposes to amend Options 7, Section 2(1) to add rule text after the title of Section 2(1), Fees and Rebates for Execution of Contracts on The Nasdaq Options Market. Specifically, the Exchange proposes to add the following note:

Orders executed in the Opening Cross per Options 3, Section 8 are not subject to Options 7, Section 2(1) pricing, instead, these orders are subject to the pricing within Options 7, Section 2(2).

This note ''*'' will explain at the beginning of Options 7, Section 2(1) the pricing applicable to the transaction fees within Section 2(1). The Exchange believes the addition of this rule text will bring clarity to the Section 2 pricing and make clear that the transaction fees within Options 7, Section 2(1) apply intra-day. This new note ''*'' does not represent a substantive change. The proposed new note ''*'' is intended to serve as a guidepost to Participants referring to the NOM Pricing Schedule.

Currently, the Exchange's Opening Cross pricing is contained within Options 7, Section 2(2). The Exchange proposes to add a citation to the title of Options 7, Section 2(2) to the Opening Cross rule. Options 7, Section 2(2) would state, ''Opening Cross per Options 3, Section 8.''

Current Options 7, Section 2(3) provides the Fees for routing contracts to markets other than NOM. The Exchange proposes to amend the BX Routing Fees.

Currently, Non-Customers[5] are assessed a $0.99 per contract to any options exchange. Customers[6] are

[4] Part (b)(3) of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols requires that Market Makers execute greater than 0.01% of CV via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within The Nasdaq Stock Market Closing Cross in the same month.

[5] As proposed within Options 7, Section 1, the term ''Non-Customer'' applies to transactions for the accounts of NOM Market Makers, Non-NOM Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

[6] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for

Continued

currently assessed a Routing Fee to Phlx of $0.13 per contract (''Fixed Fee'') in addition to the actual transaction fee assessed. Customers are also currently assessed a Routing Fee to BX of $0.13 per contract. In addition, as it relates to all other options exchanges, Customers are currently assessed a Routing Fee of $0.23 per contract (''Fixed Fee'') in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee is $0.13 per contract.

The Exchange now proposes to amend the BX Routing Fee to include the actual transaction fee assessed in addition to the ''Fixed Fee'' of $0.13 per contract. The proposed changes will align BX's Routing Fee with the current Phlx Routing Fee.

The Exchange is proposing to recoup the actual transaction fee (in addition to the Fixed Fee) that is incurred by the Exchange in connection with routing orders, on behalf of its Participants, to BX. Previously, the Exchange retained the rebates paid by BX to recover the costs associated with providing its routing services, did not assess the actual transaction fees charged by BX for Customer orders, and only assessed such orders the $0.13 per contract Fixed Fee. This is because when orders are routed to BX, such orders are considered as removing liquidity on BX, and BX previously assessed rebates to Customer orders for removing liquidity. In particular, prior to the Recent Rule Change,[7] Customer orders executed on BX received Penny Symbol Rebates to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm that ranged from $0.00 to $0.35 per contract,[8] depending on the volume tier achieved. Customers also previously received Non-Penny Rebates to Remove Liquidity of $0.80 per contract, regardless of tier and contra-party. As part of the Recent Rule Change, the aforementioned rebates were removed from the BX Pricing Schedule and replaced with a maker/taker fee structure where market participants are assessed a rebate or fee for adding liquidity to the market, or charged a fee for removing liquidity from the market.[9]

With this recent change in the structure of BX's Pricing Schedule, the Exchange proposes to align the Routing Fees to BX with the current Routing Fees to Phlx. With this proposal, the Exchange will no longer retain rebates paid by BX as BX no longer provides rebates for Customer orders removing liquidity on BX and instead charges a taker fee for such orders. The Exchange will continue to assess the $0.13 per contract Fixed Fee for routing Customer orders to BX, and will propose to also charge the actual transaction fee assessed by BX.

Technical Amendments

The Exchange proposes to amend Options 7, Section 2(3) to lowercase ''PHLX'' and add a space that was missing within the Routing Fees to Phlx. The Exchange also proposes to amend the name of the Exchange from ''BX Options'' to ''BX'' and add the words ''per contract'' within the Routing Fee to all other options exchanges. This amendment is not a substantive change, rather it is a clarification.

Finally, the Exchange proposes to renumber Options 7, Section 2(6), Market Access and Routing Subsidy (''MARS''), to Options 7, Section 2(4). The Exchange notes that the Pricing Schedule did not contain a Section 2(5).

Applicability to and Impact on Participants[10]

With respect to the NOM Market Maker Tier 3 rebate within Options 7, Section 2(1), the Exchange believes that amending the second part of the qualification[11] will attract greater volume to both NOM and The Nasdaq Stock Market.[12] Any NOM Market Maker may obtain the Tier 3 rebate provided the qualifications are met. Furthermore, NOM Market Maker Tier 3 provides two ways to achieve the NOM Tier 3 rebate of $0.30 per contract.[13]

Market Makers have certain obligations[14] on NOM, unlike other market participants. Market Maker [sic] are a source of liquidity. The proposed amendments are generally designed to attract additional order flow to the Exchange by incentivizing NOM Market Makers. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of these market participants in turn facilitates tighter spreads. These incentives are intended to benefit all NOM market participants who will be able to interact with additional liquidity which this incentive attracts to the Exchange.

Today, no NOM Market Maker has earned the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Symbols a Market Maker based on the second part of the qualification in the last two months. The Exchange notes that other NOM Market Makers could have qualified for this Tier 3 rebate, although they have qualified for different NOM Market Maker Rebate to Add Liquidity in Penny Symbols. NOM Market Maker Rebate to Add Liquidity in Penny Symbols are paid per the highest tier achieved, so if a NOM

clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(a)(47)).

[7] *See* Securities Exchange Act Release No. 91473 (April 5, 2021), 86 FR 18562 (April 9, 2021) (SR–BX–2021–009) (''Recent Rule Change'').

[8] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month would receive no Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month would receive a $0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month will receive a $0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

[9] *See* note 3 [sic] above.

[10] On May 21, 2019, the SEC Division of Trading and Markets (the ''Division'') issued fee filing guidance titled ''Staff Guidance on SRO Rule Filings Relating to Fees'' (''Guidance''). Within the Guidance, the Division noted, among other things, that the purpose discussion should address ''how the fee may apply differently (*e.g.,* additional cost vs. additional discount) to different types of market participants (*e.g.,* market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants.'' *See* Guidance (available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees*). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

[11] With this proposal, the Exchange is amending the second part of the tier qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(1) by requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market, an increase from 0.70%. Also, the Exchange is proposing to amend the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(2) by requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, a decrease from 0.18%.

[12] All NOM Participants are required to become members of The Nasdaq Stock Market pursuant to General 3 Membership and Access rules.

[13] NOM Participants may also add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month to achieve the Tier 3 rebate. *See* Options 7, Section 2(1). Also, Participants who achieve the Tier 3 rebate will receive $0.40 per contract to add liquidity in the following symbols: AAPL, SPY, QQQ, IWM, and VXX. *See* Options 7, Section 2(1)

[14] See Options 2, Section 5. Also, transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. *See also* Options 2, Section 4.

Market Maker qualifies for Tiers 4–6, that NOM Market Maker would receive the highest rebate they qualify for even if they qualified for Tier 3. With this proposal, the Exchange seeks to attract additional NOM Market Maker order flow in Penny Symbols from Participants that currently qualify for NOM Market Maker Rebate to Add Liquidity in Penny Symbols Tiers 1 and 2.

With respect to the amendments to NOM's Routing Fees to BX, the Exchange notes that the proposed Routing Fee would apply to all NOM Participants uniformly.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[16] 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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.[17]

The Exchange's proposed changes to its Pricing Schedule 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'. . . .'' [18]

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.'' [19]

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 sixteen 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 and market share relative to its competitors.[20]

Options 7, Section 1

The Exchange's proposal to define the term ''Non-Customer'' within Options 7, Section 1 is reasonable, equitable and not unfairly discriminatory as the amendment will bring greater clarity to NOM's Options 7 Rules. The term ''Non-Customer'' is currently utilized within the fees for routing at Options 7, Section 2(3). The addition of this defined term does not amend the manner in which the Exchange currently applies the term with respect to its routing fees. The term ''Customer'' [21] is currently defined and this term applies to Participants that are not customers. This change would be non-substantive.

The Exchange's proposal to relocate the rule text relating to tier calculations from Options 7, Section 2(4), without change, to Options 7, Section 1, General Provisions is reasonable, equitable and not unfairly discriminatory. The Exchange believes that this information is better suited to Section 1 along with other general information because the rule applies to Options 7 pricing and all Participants transacting on BX.

Options 7, Section 2

The Exchange's proposal to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols is reasonable. Amending the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(1), by requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.80% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market, is an increase from 0.70%. Amending the second part of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols at (b)(2), by requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.15% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, is a decrease from 0.18%.[22] Although the first component of the part (b) qualification requiring Market Makers to transact in all securities through one or more of its Nasdaq Market Center MPIDs is being increased and the second component of the part (b) qualification requiring Market Makers to transact in Tape B securities through one or more of its Nasdaq Market Center MPIDs is being decreased, the Exchange believes that these amendments may incentivize additional Market Makers to qualify for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols by transact greater volume on The Nasdaq Stock Market. The Tier 3 qualification requires Market Makers to qualify for either Part (a) or (b) of the qualification. The Exchange believes that the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols will continue to incentivize Market Makers to direct additional order

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

[17] *See* Guidance, *supra* note 7 [sic]. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

[18] *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)).

[19] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[20] The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it as a result of this rule change.

[21] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(a)(47)).

[22] Part (b)(3) of the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols requires that Market Makers execute greater than 0.01% of CV via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within The Nasdaq Stock Market Closing Cross in the same month is not being amended.

flow to NOM and The Nasdaq Stock Market and, in turn, market participants will benefit from the opportunity to interact with such order flow. The Exchange notes that this proposal is designed as a means to improve market quality by providing Participants with an incentive to increase their provision of liquidity on the Exchange's equity and options markets. Further, any NOM Market Maker may obtain the Tier 3 rebate provided the qualifications are met. NOM Market Maker Tier 3 provides two ways to achieve the NOM Tier 3 rebate of $0.30 per contract.[23] These incentives are intended to benefit all NOM market participants who will be able to interact with additional liquidity which this incentive attracts to the Exchange. Market Makers have certain obligations [24] on NOM, unlike other market participants. Market Maker are a source of liquidity. The proposed amendments are generally designed to attract additional order flow to the Exchange by incentivizing NOM Market Makers. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of these market participants in turn facilitates tighter spreads.

The Exchange's proposal to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols is equitable and not unfairly discriminatory as the Exchange will uniformly pay the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols to any qualifying Market Maker. NOM Market Makers add value through continuous quoting and the commitment of capital.[25] Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering these rebates to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants, on both NOM and The Nasdaq Stock Market, in the quality of order interaction.

The Exchange's proposal to amend Options 7, Section 2(1) to add rule text after the title of Section 2(1), Fees and Rebates for Execution of Contracts on The Nasdaq Options Market, which explains the pricing applicable to the transaction fees within Section 2(1) is reasonable, equitable and not unfairly discriminatory. The Exchange believes the addition of this rule text will bring clarity to the Options 7, Section 2 pricing by making clear that the transaction fees within Options 7, Section 2(1) apply intra-day. This new note ''*'' does not represent a substantive change. The proposed new note ''*'' is intended to serve as a guidepost to Participants referring to the NOM Pricing Schedule.

The Exchange's proposal to add a citation to the title of Options 7, Section 2(2) to the Opening Cross rule is reasonable, equitable and not unfairly discriminatory. This amendment will add clarity to the rule text.

The Exchange's proposal to amend the BX Customer Routing Fee within Options 7, Section 2(3) to start charging the actual transaction fee assessed by BX in addition to the current $0.13 per contract Fixed Fee is reasonable. As a general matter, the Exchange notes that use of the Exchange's routing services is completely voluntary. In the alternative, member organizations may submit orders to the Exchange as ineligible for routing or ''DNR'' to avoid Routing Fees.[26] Furthermore, the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different pricing. In this instance, proposing to assess the actual transaction fee, in addition to the current Fixed Fee of $0.13 per contract, is reasonable in light of the Recent Rule Change described above where BX no longer provides rebates to Customer orders that are routed to and executed on BX, and instead charges them a taker fee.[27] As proposed, the Exchange would recoup the actual transaction cost it incurs when routing Customer orders to BX in lieu of collecting any rebate paid by BX. Today, the Exchange similarly assesses orders routed to Phlx a Fixed Fee of $0.13 per contract plus the actual transaction fee. As such, the proposal would align the BX Routing Fee with the Phlx Routing Fee.

The Exchange's proposal to amend the BX Customer Routing Fee within Options 7, Section 2(3) is equitable and not unfairly discriminatory because the Exchange would uniformly assess the same transaction fee assessed by BX for the Customer order routed to BX plus a Fixed Fee of $0.13 per contract.

The Exchange's proposal to amend Options 7, Section 2(3) to lowercase ''PHLX,'' add a space that was missing within the Routing Fees to Phlx, amend the name ''BX Options'' to ''BX,'' and add the words ''per contract'' within the Routing Fee to all other options exchanges and the proposal to renumber Options 7, Section 2(6), Market Access and Routing Subsidy (''MARS''), to Options 7, Section 2(4) [28] are reasonable, equitable and not unfairly discriminatory. These non-substantive amendments will bring greater clarity to the Rulebook.

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.

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. The Exchange believes that the proposed changes will enable the Exchange to recover the costs it incurs to route orders to away markets, particularly BX, while also passing along savings realized by leveraging Nasdaq's infrastructure and scale to market participants when those orders are routed to Nasdaq-affiliated options markets, as further discussed above.

The Exchange also does not believe its proposal will impose an undue burden on intra-market competition.

[23] NOM Participants may also add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month to achieve the Tier 3 rebate. *See* Options 7, Section 2(1). Also, Participants who achieve the Tier 3 rebate will receive $0.40 per contract to add liquidity in the following symbols: AAPL, SPY, QQQ, IWM, and VXX. *See* Options 7, Section 2(1).

[24] *See* Options 2, Section 5. Also, transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. *See also* Options 2, Section 4.

[25] *See* Options 2, Sections 4 and 5.

[26] *See* Options 5, Section 4(a)(iii)(A).

[27] *See* note 7 above.

[28] The Exchange notes that the Pricing Schedule did not contain a Section 2(5).

Options 7, Section 1

The Exchange's proposal to define the term ''Non-Customer'' within Options 7, Section 1 does not impose an undue burden on competition as the amendment will bring greater clarity to NOM's Options 7 Rules.

The Exchange's proposal to relocate the rule text from Options 7, Section 2(4), without change, to Options 7, Section 1, General Provisions does not impose an undue burden on competition. The Exchange believes that this information is better suited to Section 1 along with other general information because the rule applies to Options 7 pricing and all Participants transacting on BX.

The Exchange's proposal to amend the qualification for the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols does not impose an undue burden on competition as the Exchange will uniformly pay the Tier 3 Market Maker Rebate to Add Liquidity in Penny Symbols to any qualifying Market Maker. NOM Market Makers add value through continuous quoting and the commitment of capital.[29] Because NOM Market Makers have these obligations to the market and regulatory requirements that normally do not apply to other market participants, the Exchange believes that offering these rebates to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations. Finally, encouraging NOM Market Makers to add greater liquidity benefits all market participants, on both NOM and The Nasdaq Stock Market, in the quality of order interaction.

Options 7, Section 2

The Exchange's proposal to amend Options 7, Section 2(1) to add rule text after the title of Section 2(1), Fees and Rebates for Execution of Contracts on The Nasdaq Options Market, which explains the pricing applicable to the transaction fees within Section 2(1) does not impose an undue burden on competition. The Exchange believes the addition of this rule text will bring clarity to the Section 2 pricing, which is applicable to all Participants.

The Exchange's proposal to add a citation to the title of Options 7, Section 2(2) to the Opening Cross rule does not impose an undue burden on competition. This amendment will add clarity to the rule text.

The Exchange's proposal to amend the BX Customer Routing Fee within Options 7, Section 2(3) does not impose an undue burden on competition. In this instance, the Exchange is proposing to charge Customer orders that are routed to BX the actual transaction fee assessed by BX in addition to the current Fixed Fee of $0.13 per contract in light of the fee changes under the Recent Rule Change described above where BX no longer provides rebates to Customer orders that are routed to and executed on BX, and instead charges them a taker fee.[30] The proposed changes reflect the need to recover the Exchange's costs associated with providing its routing services. Furthermore, as noted above, the use of the Exchange's routing services is completely voluntary and optional, and the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different pricing. As such, it is likely that the Exchange will lose market share as a result of the changes proposed herein if they are unattractive to market participants.

The Exchange also does not believe its proposal will impose an undue burden on intra-market competition. As discussed above, the Exchange would uniformly assess the same transaction fee assessed by BX for the Customer order routed to BX plus a Fixed Fee of $0.13 per contract. Under this proposal, Non-Customer orders would continue to be assessed the $0.99 per contract routing fee and not be assessed the actual BX transaction fee. The Exchange does not believe its pricing proposal will place any market participant at a relative disadvantage compared to other market participants because the proposed routing fee for Customer orders will actually narrow the difference between the routing fees assessed to Customer and Non-Customer orders routed to BX.

The Exchange's proposal to amend Options 7, Section 2(3) to lowercase ''PHLX,'' add a space that was missing within the Routing Fees to Phlx, amend the name ''BX Options'' to ''BX,'' and add the words ''per contract'' within the Routing Fee to all other options exchanges and the proposal to renumber Options 7, Section 2(6), Market Access and Routing Subsidy (''MARS''), to Options 7, Section 2(4) do not impose an undue burden on competition. These non-substantive amendments will bring greater clarity to the Rulebook.

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.[31]

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–021 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–NASDAQ–2021–021. 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 (*http://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,

[29] *See* Options 2, Sections 4 and 5.

[30] *See* note 7 above.

[31] 15 U.S.C. 78s(b)(3)(A)(ii).

Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–021, and should be submitted on or before May 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–09026 Filed 4–29–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91669; File No. SR–NYSEArca–2021–25]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the iShares® Gold Trust Micro Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

April 26, 2021.

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 April 15, 2021, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 list and trade shares of iShares® Gold Trust Micro under NYSE Arca Rule 8.201–E. 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 list and trade shares (''Shares'') of the iShares Gold Trust Micro (the ''Trust'') under NYSE Arca Rule 8.201–E.[4] Under NYSE Arca Rule 8.201–E, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Commodity-Based Trust Shares.''[5]

The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended.[6] The Trust is not a commodity pool for purposes of the Commodity Exchange Act of 1936, as amended (the ''Commodity Exchange Act'').[7]

The sponsor of the Trust is iShares Delaware Trust Sponsor LLC (''Sponsor''). The trustee is The Bank of New York Mellon (''Trustee'') and the custodian is JPMorgan Chase Bank N.A., London branch (''Custodian'').

On December 20, 2018, the Securities and Exchange Commission (''Commission'') issued a notice of filing and effectiveness of the Exchange's proposal to list and trade shares of the iShares® Gold Trust Micro under NYSE Arca Rule 8.201–E.[8] On January 30, 2020, the Trust withdrew its registration statement on Form S–1 upon which the Exchange's previous filing (SR–NYSEArca–2018–94) was based.[9] The Exchange, therefore, is submitting this proposed rule change to permit listing and trading of the Shares based on the Trust's Registration Statement dated February 26, 2021. Shares of the Trust have not commenced trading on the Exchange.

The Commission has previously approved listing on the Exchange under NYSE Arca Rules 5.2–E(j)(5) and 8.201–E of other precious metals and gold-based commodity trusts, including the Wilshire wShares Enhanced Gold Trust;[10] the United States Gold and Treasury Investment Trust;[11] GraniteShares Gold MiniBAR Trust;[12] GraniteShares Gold Trust;[13] Merk Gold Trust;[14] ETFS Gold Trust,[15] ETFS Platinum Trust[16] and ETFS Palladium Trust (collectively, the ''ETFS Trusts'');[17] APMEX Physical-1 oz. Gold Redeemable Trust;[18] Sprott Gold Trust;[19] SPDR Gold Trust (formerly, streetTRACKS Gold Trust); iShares Silver Trust;[20] iShares COMEX Gold

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Trust has filed a registration statement on Form S–1 under the Securities Act of 1933 (15 U.S.C. 77a), dated February 26, 2021 (File No. 333–253614) (the ''Registration Statement''). The description of the operation of the Trust and the Shares herein is based, in part, on the Registration Statement.

[5] Commodity-Based Trust Shares are securities issued by a trust that represents investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[6] 15 U.S.C. 80a–1.

[7] 17 U.S.C. 1.

[8] *See* Securities Exchange Act Release No. 84881 (December 20, 2018), 83 FR 67400 (December 28, 2018) (SR–NYSEArca–2018–94).

[9] *See* iShares® Gold Trust Micro, Request to Withdraw Registration Statement on Form S–1 (January 30, 2020) (File No. 333–228469).

[10] *See* Securities Exchange Act Release No. 85 FR 67401 (October 16, 2020), 83 FR 48877 (October 22, 2020) (SR–NYSEArca–2020–59) (order approving listing and trade shares of the Wilshire wShares Enhanced Gold Trust under NYSE Arca Rule 8.201–E under NYSE Arca Rule 8.201–E).

[11] Securities Exchange Act Release No. 84257 (September 21, 2018), 83 FR 48877 (September 27, 2018) (SR–NYSEArca–2018–55) (order approving listing and trading shares of the GraniteShares Gold MiniBAR Trust under NYSE Arca Equities Rule 8.201).

[12] Securities Exchange Act Release No. 84257 (September 21, 2018), 83 FR 48877 (September 27, 2018) (SR–NYSEArca–2018–55) (order approving listing and trading shares of the GraniteShares Gold MiniBAR Trust under NYSE Arca Equities Rule 8.201).

[13] Securities Exchange Act Release No. 81077 (July 5, 2017), 82 FR 24181 (July 11, 2017) (SR–NYSEArca–2017–55) (order approving listing and trading shares of the GraniteShares Gold Trust under NYSE Arca Equities Rule 8.201).

[14] Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR–NYSEArca–2013–137).

[15] Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40).

[16] Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR–NYSEArca–2009–95).

[17] Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR–NYSEArca–2009–94).

[18] Securities Exchange Act Release No 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSEArca–2012–18).

[19] Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR–NYSEArca–2009–113).

[20] *See* Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24,

Trust (now known as iShares Gold Trust); [21] Long Dollar Gold Trust; [22] Euro Gold Trust, Pound Gold Trust and Yen Gold Trust; [23] and The Gold Trust.[24] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (''NYSE'') [25] and listing of iShares COMEX Gold Trust and iShares Silver Trust on the American Stock Exchange LLC.[26] In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.[27]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Rule 8.201–E and thereby qualify for listing on the Exchange.[28]

Operation of the Trust [29]

According to the Registration Statement, the Trust will seek to reflect generally the performance of the price of gold before payment of the Trust's expenses and liabilities. The Trust will issue Shares which represent units of fractional undivided beneficial interest in the net assets of the Trust.

The Trust will not trade in gold futures, options or swap contracts on any futures exchange or over the counter (''OTC''). The Trust will not hold or trade in commodity futures contracts, ''commodity interests'', or any other instruments regulated by the Commodity Exchange Act. The Trust will take delivery of physical gold that complies with the London Bullion Market Association (''LBMA'') gold delivery rules.

The Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in gold. Although the Shares are not the exact equivalent of an investment in gold, they are intended to provide investors with an alternative that allows a level of participation in the gold market through the securities market.

Operation of the Gold Market

The global trade in gold consists of OTC transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options.

The OTC gold market includes spot, forward, and option and other derivative transactions conducted on a principal-to-principal basis. While this is a global, nearly 24-hour per day market, its main centers are London, New York, and Zurich.

According to the Registration Statement, most OTC market trades are cleared through London. The LBMA plays an important role in setting OTC gold trading industry standards. A London Good Delivery Bar (as described below), which is acceptable for settlement of any OTC transaction, will be acceptable for delivery to the Trust in connection with the issuance of Baskets.

The most significant gold futures exchange in the U.S. is COMEX, operated by Commodities Exchange, Inc., a subsidiary of New York Mercantile Exchange, Inc., and a subsidiary of the Chicago Mercantile Exchange Group (the ''CME Group''). Other commodity exchanges include the Tokyo Commodity Exchange (''TOCOM''), the Multi Commodity Exchange Of India (''MCX''), the Shanghai Futures Exchange, ICE Futures US (the ''ICE''), and the Dubai Gold & Commodities Exchange. The CME Group and ICE are members of the Intermarket Surveillance Group (''ISG'').

Although the Trust will not invest in gold futures, information about the gold futures market is relevant as such markets contribute to, and provide evidence of, the liquidity of the overall market for gold.

The London Gold Bullion Market

According to the Registration Statement, most trading in physical gold is conducted on the OTC market, predominantly in London. LBMA coordinates various OTC-market activities, including clearing and vaulting, acts as the principal intermediary between physical gold market participants and the relevant regulators, promotes good trading practices and develops standard market documentation. In addition, the LBMA promotes refining standards for the gold market by maintaining the ''London Good Delivery List,'' which identifies refiners of gold that have been approved by the LBMA.

In the OTC market, gold bars that meet the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of an LBMA-acceptable refiner) and appearance described in ''The Good Delivery Rules for Gold and Silver Bars'' published by the LBMA are referred to as ''London Good Delivery Bars.'' A London Good Delivery Bar (typically called a ''400 ounce bar'') must contain between 350 and 430 fine troy ounces of gold (1 troy ounce = 31.1034768 grams), with a minimum fineness (or purity) of 995 parts per 1,000 (99.5%), be of good appearance and be easy to handle and stack. The fine gold content of a gold bar is calculated by multiplying the gross weight of the bar (expressed in units of 0.025 troy ounces) by the fineness of the bar. A London Good Delivery Bar must also bear the stamp of one of the refiners identified on the London Good Delivery List.

Following the enactment of the Financial Markets Act 2012, the Prudential Regulation Authority of the Bank of England is responsible for regulating most of the financial firms that are active in the bullion market, and the Financial Conduct Authority is responsible for consumer and competition issues. Trading in spot, forwards and wholesale deposits in the bullion market is subject to the Non-Investment Products Code adopted by market participants.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will create and redeem Shares on a continuous basis in ''Baskets'' of 50,000 Shares. Only ''Authorized Participants'', which are

2008) (SR–NYSEArca–2008–124) (order approving listing on the Exchange of the iShares Silver Trust).

[21] *See* Securities Exchange Act Release No. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (order approving listing on the Exchange of the street TRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[22] *See* Securities Exchange Act Release No. 79518 (December 9, 2016), 81 FR 90876 (December 15, 2016) (SR–NYSEArca–2016–84) (order approving listing and trading of shares of the Long Dollar Gold Trust).

[23] *See* Securities Exchange Act Release No. 80840 (June 17, 2017) (SR–NYSEArca–2017–33) (order approving listing and trading of shares of the Euro Gold Trust, Pound Gold Trust, and the Yen Gold Trust under NYSE Arca Equities Rule 8.201).

[24] *See* Securities Exchange Act Release No. 81918 (October 23, 2017), 82 FR 49884 (October 27, 2017) (SR–NYSEArca–2017–98) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of The Gold Trust under NYSE Arca Rule 8.201–E).

[25] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of street TRACKS Gold Trust on NYSE).

[26] *See* Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (order approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

[27] *See* Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (order approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (order approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

[28] With respect to the application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

[29] The description of the operation of the Trust, the Shares and the gold market contained herein is based, in part, on the Registration Statement. *See* note 4, *supra.*

registered broker-dealers who have entered into written agreements with the Sponsor and the Trustee, can deposit gold and receive Baskets in exchange. Upon the deposit of the corresponding amount of gold with the Custodian, and the payment of the Trustee's applicable fee and of any expenses, taxes or charges, the Trustee will deliver the appropriate number of Baskets to the DTC account of the depositing Authorized Participant. The Sponsor and the Trustee will maintain a current list of Authorized Participants. Gold deposited with the Custodian must meet the specifications for weight, dimensions, fineness (or purity), identifying marks and appearance of gold bars as set forth in ''The Good Delivery Rules for Gold and Silver Bars'' published by the LBMA. Orders to create or redeem Shares must be placed by 3:59 p.m. Eastern Time (''ET.'').

The ''Basket Gold Amount'' necessary for the creation of a Basket will change from day to day.[30] On each day that NYSE Arca is open for regular trading, the Trustee will adjust the quantity of gold constituting the Basket Gold Amount as appropriate to reflect sales of gold, any loss of gold that may occur, and accrued expenses. The computation is made by the Trustee as promptly as practicable after 4:00 p.m., E.T. The Trustee will determine the Basket Gold Amount for a given day by multiplying the net asset value (''NAV'') by the number of Shares in each Basket (50,000) and dividing the resulting product by that day's LBMA Gold Price PM.

The Trustee intends to make available on each business day through the same channels used to disseminate the actual Basket Gold Amount determined by the Trustee as indicated above an indicative basket gold amount (''Indicative Basket Gold Amount'') for the next business day. Authorized Participants may use that Indicative Basket Gold Amount as guidance regarding the amount of gold that they may expect to have to deposit with the Custodian in respect of purchase orders placed by them on such next business day and accepted by the Trustee. The agreement entered into with each Authorized Participant provides, however, that once a purchase order has been accepted by the Trustee, the Authorized Participant will be required to deposit with the Custodian the Basket Gold Amount determined by the Trustee on the effective date of the purchase order.

Redemption of Baskets; Withdrawal of Gold

According to the Registration Statement, Authorized Participants, acting on authority of the registered holder of Shares, may surrender Baskets in exchange for the corresponding Basket Gold Amount announced by the Trustee. Upon the surrender of such Shares and the payment of the Trustee's applicable fee and of any expenses, taxes or charges, the Trustee will deliver to the order of the redeeming Authorized Participant the amount of gold corresponding to the redeemed Baskets. The amount of gold necessary for the creation of a Basket, or to be received upon redemption of a Basket, will decrease over the life of the Trust, due to the payment or accrual of fees and other expenses or liabilities payable by the Trust.

Unless otherwise agreed to by the Custodian, gold is delivered to the redeeming Authorized Participants in the form of physical bars only (except that any amount of less than 430 ounces may be transferred to an unallocated account of or as ordered by, the redeeming Authorized Participant).

Net Asset Value

According to the Registration Statement, the NAV of the Trust will be obtained by subtracting all accrued fees, expenses and other liabilities of the Trust on any day from the total value of the gold and all other assets of the Trust on that day; the NAV per Share will be obtained by dividing the NAV of the Trust by the number of Shares outstanding on the date the computation is made. On each day on which NYSE Arca is open for regular trading, the Trustee will determine the NAV as promptly as practicable after 4:00 p.m., E.T. The Trustee will value the Trust's gold on the basis of that day's LBMA Gold Price PM. If there is no LBMA Gold Price PM on any day, the Trustee is authorized to use the most recently announced LBMA Gold Price AM unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate as a basis for evaluation.

Availability of Information Regarding Gold

Currently, the ''Consolidated Tape Plan'' does not provide for dissemination of the spot price of a commodity such as gold over the consolidated tape. However, there will be disseminated over the consolidated tape the last sale price for the Shares. In addition, there is a considerable amount of information about gold and gold markets available on public websites and through professional and subscription services.

Investors may obtain gold pricing information on a 24-hour basis based on the spot price for an ounce of gold from various financial information service providers, such as Reuters and Bloomberg.

Reuters and Bloomberg, for example, provide at no charge on their websites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. There are a variety of other public websites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the LBMA Gold Price is publicly available at no charge at *www.lbma.org.uk.*

Availability of Information

The intraday indicative value (''IIV'') per Share for the Shares will be disseminated by one or more major market data vendors. The IIV will be calculated based on the amount of gold held by the Trust and a price of gold derived from updated bids and offers indicative of the spot price of gold.[31]

The website for the Trust (*www.ishares.com*) will contain the following information, on a per Share basis, for the Trust: (a) The prior business day's NAV per Share; (b) Basket Gold Amount; (c) the Official Closing Price; [32] (d) the present day's Indicative Basket Gold Amount; (e) midpoint of the national best bid and the national best offer (''NBBO'') as of the time the NAV is calculated (''Bid-Ask Price''); [33] (f) calculation of the

[30] The Basket Gold Amount is the amount of gold (measured in fine ounces), determined on each business day by the Trustee, which Authorized Participants must transfer to the Trust in exchange for a Basket, or will receive in exchange for each Basket surrendered for redemption.

[31] The IIV on a per Share basis disseminated during the ''Core Trading Session'', as defined in NYSE Arca Rule 7.34–E, should not be viewed as a real-time update of the NAV, which is calculated once a day.

[32] The term ''Official Closing Price'' is defined in NYSE Arca Rule 1.1(ll) as the reference price to determine the closing price in a security for purposes of Rule 7–E Equities Trading, and the procedures for determining the Official Closing Price are set forth in that rule.

[33] The Commission has issued a notice of filing and immediate effectiveness for an Exchange proposed rule change relating to website dissemination of information regarding Official Closing Price and midpoint of the NBBO for other Exchange-listed trusts of the Sponsor. *See*

premium or discount of the Official Closing Price against such NAV expressed as a percentage of such NAV; (g) a table showing the number of days the Shares of the Trust traded at a premium or discount during the most recently complete calendar year and the most recently completed calendar quarters since that year; (h) a line graph showing the Shares' premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter); [34] (i) the prospectus; and (j) other applicable quantitative information.

In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Rule 8.201–E(e) for initial and continued listing of the Shares.

A minimum of two Baskets or 100,000 Shares will be required to be outstanding at the start of trading, which is equivalent to 1,000 fine ounces of gold. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Trust subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Rule 7.34–E(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Further, NYSE Arca Rule 8.201–E sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Under NYSE Arca Rule 8.201–E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3–E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[35] The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as described above. If the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[36] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the

Securities Exchange Act Release No. 90547 (December 2, 2020), 85 FR 79060 (December 8, 2020) (SR–NYSEArca–2020–99) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Availability of Information for the iShares Gold Trust and the iShares Silver Trust under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and iShares S&P GSCI Commodity-Indexed Trust under Rule 8.203–E (Commodity Index Trust Shares)).

[34] The Commission has approved an Exchange proposed rule change relating to website dissemination of information regarding dissemination of premium or discount information for other Exchange-listed trusts of the Sponsor. *See* Securities Exchange Act Release No. 91031 (February 1, 2021), 86 FR 8464 (February 5, 2021) (SR–NYSEArca–2020–98) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Regarding the Availability of Information for the iShares Gold Trust, the iShares Silver Trust, and the iShares S&P GSCI Commodity-Indexed Trust).

[35] *See* NYSE Arca Rule 7.12–E.

[36] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

Exchange has in place a comprehensive surveillance sharing agreement.[37]

Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through Equity Trading Permit (''ETP'') Holders acting as registered ''Market Makers'', in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Trust on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core Trading Session and ''Late Trading Session'' (as defined in NYSE Arca Rule 7.34–E) after the close of the major world gold markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as will be described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the Commodity Futures Trading Commission has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[38] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public websites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Investors may obtain gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Trust's website will provide pricing information for gold spot prices and the Shares. The Trust's website will provide reliable, accurate and up-to-date pricing information for the Shares consistent with the changes to disseminated information for similar Exchange-listed trusts of the Sponsor previously approved by the Commission in SR–NYSEArca–2020–98.[39] Market prices for the Shares will be available from a variety of sources including brokerage firms, information websites and other information service providers. The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's website. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the LBMA Gold Price is publicly available at no charge at *www.lbma.org.uk.* The Trust's website will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the

[37] For a list of the current members of ISG, *see www.isgportal.org.*

[38] 15 U.S.C. 78f(b)(5).

[39] *See* note 34, *supra.*

benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding gold pricing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating to physical gold.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[40] and Rule 19b–4(f)(6) thereunder.[41]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2021–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2021–25 and should be submitted on or before May 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–09019 Filed 4–29–21; 8:45 am]

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[40] 15 U.S.C. 78s(b)(3)(A).

[41] 17 CFR 240.19b–4(f)(6).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91672; File No. SR–GEMX–2021–02]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete the Exchange Membership Rules and Incorporate by Reference the Membership Rules of The Nasdaq Stock Market LLC

April 26, 2021.

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 April 13, 2021, Nasdaq GEMX, LLC (''GEMX'' 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 delete the Exchange's membership rules currently under the General 3 title, incorporate by reference The Nasdaq Stock Market LLC's (''Nasdaq'') rules in the General 3 Rule 1000 Series, and other related changes.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

General 3 of the Exchange's General Rules and Nasdaq's General 3, Rules 1000 Series prescribe the qualifications and procedures for applying for membership, respectively, on the Exchange and Nasdaq. The Exchange proposes to delete in their entirety the rules under its General 3 title, entitled ''Membership and Access,'' and incorporate by reference the Nasdaq General 3, Rules 1000 Series (the ''Nasdaq Rule 1000 Series'' or ''Nasdaq Membership Rules'') as described below.[3] The Exchange will also relocate the text under its rule under General 3, Section 4(b) and place it under new Exchange General 2, Section 11, as further described below.

This proposal is part of the Exchange's plan to harmonize its membership rules with the membership rules of the Nasdaq, Nasdaq BX, Inc. (''BX''), and Nasdaq ISE, LLC (''ISE'') exchanges.[4] The Exchange notes that Nasdaq MRX, LLC, and Nasdaq Phlx, LLC (''Phlx'') (together with Nasdaq, BX, and ISE, the ''Affiliated Exchanges'') each plan to propose similar rule changes that will render their membership rules substantially similar to those of Nasdaq, BX, and ISE. To account for any differences that may exist, the proposed introductory paragraphs list instances in which cross references in the Nasdaq Series 1000 Rules to other Nasdaq rules shall be read to refer instead to the Exchange Rules, and references to Nasdaq terms (whether or not defined) shall be read to refer to the Exchange-related meanings of those terms. For instance, references to defined terms ''Exchange'' or ''Nasdaq'' shall be read to refer to the Nasdaq GEMX Exchange; ''Rule'' or ''Exchange Rule'' shall be read to refer to the Exchange Rules; the defined term ''Applicant'' in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant to the Nasdaq GEMX Exchange; the defined terms ''Board'' or ''Exchange Board'' in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq GEMX Board of Directors; the defined term ''Director'' in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Nasdaq GEMX Exchange; the defined term ''Exchange Review Council'' in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq GEMX Exchange Review Council; the defined term ''Subcommittee'' in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Nasdaq GEMX Exchange Review Council; the defined term ''Interested Staff'' in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Nasdaq GEMX; the defined term ''Member'' in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq GEMX Member who acts in its capacity as an Electronic Access Member, a Primary Market Maker, or a Competitive Market Maker (including a ''Foreign Member,'' as defined under proposed GEMX General 3); the defined term ''Associated Person'' shall be read to refer to a Nasdaq GEMX Associated Person; the defined terms ''Exchange Membership Department'' or ''Membership Department'' shall be read to refer to the Nasdaq GEMX Membership Department; and the defined term ''Exchange Regulation Department'' shall be read to refer to the Nasdaq GEMX Regulation Department.

Additionally, cross references in the Nasdaq Rule 1000 Series to ''General 1 and Equity 1'' shall be read as references to Nasdaq GEMX General 1, Section 1; cross references in the Nasdaq Rule 1000 Series to ''General 9, Section 20'' shall be read as references to Nasdaq GEMX Options 10, Section 5(c)(2); cross references in the Nasdaq Rule 1000 Series to ''General 9, Section 37'' shall be read as references to Nasdaq GEMX Options 9, Section 21; and cross references to the ''General 4, Rule 1200 Series'' shall be read as references to Nasdaq GEMX General 4, Section 1.[5]

Finally, as explained below, the introductory paragraph will indicate that the Nasdaq Rule 1000 Series shall also apply to Nasdaq GEMX Members who meet the requirements of a ''Foreign Member.''

As compared to the Exchange's existing General 3, by virtue of incorporating by reference the Nasdaq Membership Rules into the Exchange's rulebook, the Exchange's membership rules will be organized in a more logical order. The incorporated rules will eliminate unnecessary or vague provisions that exist under the current General 3 title, eliminate unnecessary complexity in the membership process, and otherwise streamline the Exchange's existing membership rules and their associated procedures.

Summary of Proposed Changes

A comparison between the Exchange's existing General 3 and the Nasdaq Membership Rules is summarized below. As a general matter, in comparison to the Exchange's existing membership rules, the Nasdaq Membership Rules provide for more specific membership procedures and due process. Moreover, as described below, some of the Nasdaq Rule 1000 Series rules have no analogue in the existing Exchange rules. Finally, as explained later, the Exchange will also relocate the text under General 3, Section 4(b) to new Exchange General 2, Section 11.

Rule 1001

Nasdaq Rule 1001 states that Nasdaq and the Financial Industry Regulatory Authority (''FINRA'') are parties to a Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 1000 Series and the General 4, Rule 1200 Series on behalf of Nasdaq.[6] Moreover, Nasdaq Rule 1001 provides that Nasdaq rules that refer to Nasdaq's Regulation Department, Nasdaq Regulation Department staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

Nasdaq Rule 1001 also provides that, notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions. In addition, the rule informs that Nasdaq has incorporated by reference certain FINRA rules and that Nasdaq members shall comply with those rules and interpretations as if such rules and interpretations were part of Nasdaq's Rules.

The Exchange is proposing to incorporate by reference Nasdaq Rule 1001, which currently has no analogue

[3] The Exchange will separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to General 3 to the extent such rules are effected solely by virtue of a change to the Nasdaq Rule 1000 Series. The Exchange's proposed rule change will not become effective unless and until the Commission approves this exemption request.

[4] The BX membership rules were previously amended to incorporate by reference Nasdaq's membership rules. *See* Securities Exchange Act Release No. 34–86425 (July 22, 2019), 84 FR 36139 (July 26, 2019) (SR–BX–2019–022). ISE has also filed a proposal to incorporate by reference Nasdaq's membership rules. *See* Securities Exchange Act Release No. 90903 (January 12, 2021), 86 FR 5284 18892 (January 19, 2021) (SR–ISE–2020–43).

[5] The Exchange notes that its General 4 title (entitled ''Regulation'') currently incorporates by reference the rules contained in Nasdaq's General 4 title. *See* Securities Exchange Act Release No. 85737 (April 26, 2019), 84 FR 18897 (May 2, 2019) (SR–GEMX–2019–05).

[6] Nasdaq's General 4, Section 1 (Registration, Qualification and Continuing Education) is currently incorporated by reference into the Exchange's General 4 title. *See supra* note 5.

rule under its membership rules. The language of Nasdaq Rule 1001 is applicable to the Exchange, as the Exchange is, similarly, a signatory of a Regulatory Contract with FINRA, pursuant to which FINRA has agreed to perform certain membership functions on its behalf, and also retains the ultimate legal responsibility for the performance of said functions. The Exchange believes that the incorporation by reference to Nasdaq Rule 1001 is not a substantive amendment to the Exchange rules.

Rule 1002

Nasdaq Rule 1002, which will be incorporated by reference under the Exchange's General 3 title, describes the qualifications of Nasdaq members and associated persons, the registration of branch offices, and the designation of a Member's office of supervisory jurisdiction. The Exchange will adopt by incorporation the provisions of Nasdaq Rule 1002 and delete those under current General 3, Section 1. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Nasdaq Rule 1002(a) provides that any registered broker or dealer shall be eligible for membership in Nasdaq (except for those excluded under paragraph (b) of the rule); additionally, paragraph (a) provides that any person shall be eligible to become an Associated Person of a Member (except for those excluded under Rule 1002(b)). Rule 1002(a) is similar to General 3, Section 1(a) of the Exchange's membership rules to the extent that it describes that brokers or dealers may become Exchange members (''Members''), which in turn entitles them to conduct their business on the Exchange. General 3, Section 1(a) provides that the Exchange shall issue memberships conferring the ability to transact on the Exchange. Exchange General 3, Section 1(a) also provides that there is no limit on the number of memberships that may be issued by the Exchange and that, under the rule, the Exchange shall not act in a manner that does not comply with the provisions of Section 6(c)(4) of the Exchange Act. Similarly, the Nasdaq Rule 1000 Series does not establish a limit to the number of memberships issued and conducts its review of applications for membership pursuant to the Securities Exchange Act of 1934. Furthermore, General 3, Section 1(a) provides that a Member may be a corporation, partnership, or limited liability company, and must be a registered broker-dealer and meet the qualifications for Exchange membership. The Exchange believes that incorporating by reference Nasdaq Rule 1002(a) expands upon Exchange General 3, Section 1(a) by including an associated person of a Member (''Associated Person'') under this threshold requirement.

The Exchange's General 3, Section 1(b) provides that a Member that does not maintain an office in the United States (''Foreign Member'') that is responsible for preparing and maintaining financial and other reports required to be filed with the Commission and with the Exchange must prepare such reports in English and in U.S. dollars, reimburse the Exchange for any expense incurred in examining the Member to the extent that such expense is in excess of the cost associated with examining a Member located within the continental United States, and ensure the availability of an individual who is fluent in English and knowledgeable in securities and financial matters to assist representatives of the Exchange during examinations. Nasdaq General 9, Section 50 is a Nasdaq rule substantially similar to the provisions in General 3, Section 1(b). In order to preserve the enumerated characteristics of a Foreign Member, which would otherwise be deleted from its Rulebook by incorporating by reference the Nasdaq Rule 1000 Series, the Exchange proposes to include the text of its General 3, Section 1(b) under the General 3's introductory paragraph and indicate that the Nasdaq Membership Rules will also apply to the members who meet the Foreign Member requirements.

Furthermore, General 3, Section 1(c) provides that every Member shall have as the principal purpose of being a Member the conduct of a securities business, and that purpose shall be deemed to exist if and so long as: (1) The Member has qualified and acts in respect of its business on the Exchange in one or more of the following capacities: (i) An Electronic Access Member; (ii) a Primary Market Maker; or (iii) a Competitive Market Maker; and (2) all transactions effected by the Member are in compliance with Section 11(a) of the Exchange Act and the rules and regulations adopted thereunder. The Exchange believes that the membership qualifications described in this section are consistent with the eligibility criteria described in Nasdaq Rule 1002 and the disclosures and information provided by Applicant pursuant to Nasdaq Rule 1013. To account for the Exchange rights referenced in Section 1(c) (Electronic Access Member, Primary Market Maker, or Competitive Market Maker), as defined under the Exchange's Options 1, Section 1 provisions, the Exchange will also indicate in the proposed General 3 introductory paragraph that the defined term ''Member'' in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq GEMX Member who acts in its capacity as an Electronic Access Member, a Primary Market Maker, or a Competitive Market Maker.

Nasdaq Rule 1002(b)(1) establishes that subject to such exceptions as may be explicitly provided elsewhere in the Nasdaq rules, no registered broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if such broker, dealer, or Member fails or ceases to satisfy the qualification requirements established by Nasdaq rules, or if such broker, dealer, or Member is or becomes subject to a statutory disqualification, or if such broker, dealer, or Member fails to file such forms as may be required in accordance with such process as Nasdaq may prescribe. Nasdaq Rule 1002(b)(1) can be compared to the provision currently under Exchange's General 3, Section 2(b) that establishes that the Exchange may deny or condition the approval of a Member, or preclude or condition a person from becoming associated with a Member, for the same reasons that the Commission may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Act. Furthermore, the requirement to comply with Nasdaq rules under Section (b)(1), is also consistent with the provision under Exchange General 3, Section 4(c) that states that every Member shall pledge to abide by the by-laws and rules of the Exchange, as amended from time to time, and by all Options Regulatory Alerts, notices, directives or decisions adopted pursuant to or made in accordance with the Exchange's by-laws and rules.

Nasdaq Rule 1002(b)(2) establishes that, subject to such exceptions as may be explicitly provided elsewhere in Nasdaq rules, no person shall become associated with a Member, continue to be associated with a Member, or transfer association to another Member, if such person fails or ceases to satisfy the qualification requirements established by Nasdaq rules, or if such person is or becomes subject to a statutory disqualification; and no broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if any person associated with it is ineligible to be an Associated

Person under Nasdaq Membership Rules. Nasdaq Rule 1002(b)(2) is similar to the requirement that applies to Associated Persons under General 3, Section 3(a) of the Exchange rules. The Exchange's General 3, Section 3 rules enumerate conditions that apply to persons associated with Members of the Exchange. Exchange General 3, Section 3(a) provides that Associated Persons are bound by the Exchange's by-laws and rules and the rules of the Clearing Corporation and describes the circumstances concerning the barring of an Associated Person in such role. Exchange General 3, Sections 2(b), 3(a), and 4(c) are, substantially similar to the provisions of Nasdaq Rule 1002(b),[7] which the Exchange proposes be incorporated by reference into its membership rules. The Exchange notes that General 3, Section 3(b) requires that Members file and keep current a list of its associated persons who are its executive officers, directors, principals, shareholders, and general partners. A Member's obligation to maintain updated information for their registered representatives or principals is prescribed under Nasdaq's General 4 title which was previously incorporated by reference into the Exchange rules,[8] rendering Exchange General 3, Section 3(b) unnecessary.

Exchange General 3, Section 3(c) provides that a claim of any Associated Person described in the first sentence of General 3, Section 3(b) (*i.e.,* a Member's executive officers, directors, principal shareholders, and general partners) against a Member shall be subordinate in right of payment of customers and other Members. This subordination rule was copied from ISE's then-current Rulebook at the time, but was never directly applicable to GEMX. The rule was originally approved as part of ISE's Form 1 filing on February 24, 2000.[9] At that time, ISE members had equity ownership interest in ISE through their memberships and the subordination language was relevant. ISE has since demutualized, with its members no longer having any equity ownership interest through their ISE memberships, and has deleted this language as obsolete.[10] Because GEMX members never had a similar ownership interest through their GEMX memberships, this rule did not apply to GEMX in the first place. As such, the Exchange proposes to delete this provision in its entirety.

Nasdaq Rule 1002(c) establishes, as a condition to maintaining Nasdaq membership, that Members shall at all times maintain membership in a registered securities association or another registered exchange. Furthermore, the rule prescribes that Members that transact business with customers shall at all times be members of FINRA. The Exchange proposes to incorporate this rule by reference. Because the Exchange does not act in the capacity of a designated examining authority (''DEA''), like the Nasdaq, BX, and ISE, it requires that all applicants for membership have an assigned DEA in place as a condition of its membership.

Nasdaq Rule 1002(d) states that Nasdaq members are deemed to comply with Nasdaq's branch office registration requirements to the extent that they keep current a Uniform Branch Office Registration Form (''Form BR''), which contains the requisite information and which is accessible electronically to Nasdaq. Members that are not FINRA members shall continue to submit to Nasdaq a Branch Office Disclosure Form, as they have done previously. The Exchange proposes to incorporate by reference this rule, which is consistent with the provisions under the Exchange's Options 10, Section 5, entitled Branch Offices.[11] The Exchange proposes that the cross-reference in Nasdaq Rule 1002(d)(2) to General 9, Section 20 shall be read as a reference to Exchange Options 10, Section 5(c)(2).

Rule 1011

Nasdaq Rule 1011 contains definitions applicable to the Nasdaq Membership Rules. Nasdaq Rule 1011 has no analogue rule in the existing Exchange's General 3 title. By incorporating by reference the Nasdaq definitions under Rule 1011, the Exchange believes it will further harmonize its rules with respect to the membership rules of Nasdaq, BX, and ISE. The Exchange notes that the defined terms in Nasdaq Rule 1011, to be incorporated by reference into the Exchange's rules, are self-contained and have no impact on GEMX rules outside its membership rules. The terms ''Applicant,'' ''Department,'' ''Director,'' ''Interested Staff,'' ''Securities business,'' ''Exchange Board,'' ''principal place of business,'' ''registered broker or dealer,'' ''Representative,'' ''sales practice event,'' ''Subcommittee,'' and ''statutory disqualification'' have not been defined in the Exchange's rulebook. The Exchange notes that the term ''associated person'' as defined in the Exchange's rulebook[12] is substantially similar to the definition in Nasdaq General 1(b)(2). Relatedly, the term ''Proprietary Trading Firm'' as defined in Nasdaq Rule 1011(o) is substantially similar with the definition of ''proprietary trading'' as defined in the Exchange's rulebook.[13] The Exchange proposes to adopt by incorporation the text of Nasdaq Rule 1011 in its entirety. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Rule 1012

Nasdaq Rule 1012 (''General Application Provisions'') provides a detailed outline of the requirements that an Applicant must follow in order to file an application for membership with Nasdaq. In contrast, the Exchange membership rules contain vague provisions describing the manner in which an application shall be submitted or how service shall be performed. The Exchange believes that Nasdaq Rule 1012 provides a more detailed set of instructions for Applicants, Members, and Associated Persons to submit materials and the requirements for service of documents. The Exchange believes that incorporating Rule 1012 by reference will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Nasdaq Rule 1012(a) provides that Applicants and Nasdaq Members may submit an application or other documents and information to Nasdaq by first-class mail, overnight courier, hand delivery, or by electronic means; this section also provides that Nasdaq shall serve a notice or decision issued under the Nasdaq Membership Rules by first-class mail or electronic means on the Applicant or Member or its counsel,

[7] The Exchange notes that it will not relocate or carve-out this duplicative provision concerning The Options Clearing Corporation (''OCC''). Pursuant to the Exchange's Options 9, Section 2 (''Adherence to Law''), Members are required to abide by the Act, the Exchange's by-laws, the rules of the Exchange, and OCC rules.

[8] *See supra* note 5.

[9] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000) (Order Granting Registration as a National Securities Exchange).

[10] *See* Securities Exchange Act Release No. 45803 (April 23, 2002), 67 FR 21306 (April 30, 2002) (Order Approving Proposed Rule Change and Amendment No. 1 thereto by the International Securities Exchange LLC To Restructure From a Limited Liability Company to a Corporation).

[11] ISE Options 10 is incorporated by reference into GEMX Options 10. *See* Securities Exchange Act Release No. 86346 (July 10, 2019), 84 FR 33999 (July 16, 2019) (SR–GEMX–2019–08).

[12] Exchange General 1, Section 1(a)(1).

[13] Exchange Options 1, Section 1(a)(40)

unless a Nasdaq rule specifies a different method of service; finally, this section also details when service by Nasdaq or an Applicant shall be deemed complete. The Exchange membership rules contain no such provision. The Exchange believes that incorporating Nasdaq 1012(a) by reference improves its membership application process by adopting specific provisions regarding the manner of submission and service of documents.

Nasdaq Rule 1012(b) provides a definition of the term ''calendar days'' and describes the manner in which times under the Nasdaq Membership Rule shall be computed. The Exchange membership rules contain no such provision. The Exchange believes that adopting this rule by incorporation will provide further clarity to the calculation of times under its membership rules.

Nasdaq Rule 1012(c) describes a(n) Applicant's, Member's, and Associated Person's duty to ensure that the information they provide to Nasdaq at the time of the filing is accurate, complete, and current. Moreover, this provision requires that Applicant's, Member's, and Associated Person's shall ensure that membership applications and supporting materials filed with Nasdaq remain accurate, complete, and current at all times by filing supplementary amendments, which must be filed within 15 business days of their learning of the facts or circumstances giving rise to the need for an amendment. Furthermore, this section requires that Applicants, Members, and Associated Persons promptly notify Nasdaq, in writing, of any material adverse change in their financial condition. The Exchange membership rules contain no such provision. The Exchange believes that incorporating Nasdaq 1012(c) by reference improves its membership rules by adopting provisions concerning a Member's duty to ensure the accuracy, completeness, and current nature of membership information.

Exchange General 3, Section 4(b) states that every Member shall report to the Exchange all contact information required by the Exchange via the FINRA Contact System. Section 4(b) also requires Exchange Members to update their contact information promptly when necessary, but in no event later than 30 days following any change, and within 17 business days after the end of each calendar year; furthermore, it requires members to comply with any request for such information by the Exchange within 15 days or any longer period agreed upon with Exchange staff. The Exchange proposes the relocation of this provision, with minor lettering changes, to Exchange General 2 title (''Organization and Administration'') under new Section 11, entitled Contact Information Requirements. Exchange General 3, Section 4(b) is substantially similar to the rule text in both Nasdaq's and BX's General 2, Section 11 and identical to the similarly numbered rule in the ISE rulebook.

As previously stated, the Exchange proposes to adopt by incorporation the text of Nasdaq Rule 1012 in its entirety, as the rule's provisions provide clear instructions concerning the submission of membership applications and other materials; the requirements for service of documents; and the Applicants', Members', and Associated Persons' duty to ensure that the information filed with the Exchange is up to date.

Rule 1013

Nasdaq Rule 1013 sets forth the procedure for filing applications for new membership on the Exchange. The Exchange proposes to incorporate Nasdaq Rule 1013 by reference under its General 3 title. The Exchange is adopting Nasdaq Rule 1013 as it expands upon and provides clarity to the procedure in the Exchange's General 3, Section 5. The Exchange believes that incorporating Rule 1013 by reference will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Nasdaq Rule 1013(a) describes in detail the membership application process. Subsection (a)(1) (''Where to File; Contents''), provides that an application shall include (A) a copy of the Applicant's current Form BD, if not otherwise available to Nasdaq electronically through the Central Registration Depository (''CRD''); (B) an original Nasdaq-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f–2 and for whom a fingerprint card has not been filed with another self-regulatory organization (SRO), if such fingerprints are not otherwise available electronically to Nasdaq through CRD; (C) payment for such fee as may be required under the Rules; (D) a description of the Applicant's proposed trading activities on Nasdaq, such as the types of securities it will trade, whether it will be a market maker, or an order entry firm, and/or engage in block trading activities, and the extent to which the Applicant is conducting such activities as a member of other SROs; (E) a copy of the Applicant's most recent audited financial statements and a description of any material changes in the Applicant's financial condition since the date of the financial statements; (F) an organizational chart; (G) the intended location of the Applicant's principal place of business and all other branch offices, if any, and the names of the persons who will be in charge of each office; (H) a description of the communications and operational systems the Applicant will employ to conduct business and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures; system redundancies; disaster recovery plans; and system security; (I) a copy of any decision or order by a federal or state authority or SRO taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person; (J) a statement indicating whether the Applicant or any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any SRO, the foreign equivalent of a SRO, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act (''CEA'') or any substantially equivalent foreign statute or regulation, a futures association registered under the CEA or any substantially similar foreign statute or regulation, the Commission or any other ''appropriate regulatory agency'' (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the CRD, together with all relevant details, including any sanctions imposed; (K) a statement indicating whether any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any SRO, the foreign equivalent of an SRO, a foreign or international securities exchange, a contract market designated pursuant to the CEA or any substantially equivalent foreign statute or regulation, a futures association registered under the CEA or any substantially similar foreign statute or regulation, the Commission or any other ''appropriate regulatory agency'', the CFTC, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the CRD, together with all relevant details, including any sanctions

imposed; (L) a copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with services regarding the execution or clearance and settlement of transactions effected on Nasdaq; (M) if the Applicant proposes to make markets on Nasdaq, a description of the source and amount of Applicant's capital to support its market making activities on Nasdaq, and the source of any additional capital that may become necessary; (N) a description of the financial controls to be employed by the Applicant with respect to anti-money laundering compliance rules as set forth in General 9, Section 37; (O) a copy of the Applicant's written supervisory procedures with respect to the activities identified in paragraph (a)(1)(D); (P) a list of the persons conducting the Applicant's market making and other trading activities, and a list of the persons responsible for such persons' supervision, together with the CRD numbers; (R) a copy of the Applicant's most recent ''FOCUS Report'' (Form X–17A–5) filed with the SEC pursuant to SEC Rule 17a–5; (S) all examination reports and corresponding responses regarding the Applicant for the previous two years from the SROs of which it is a member; (T) a copy of Nasdaq's Membership Agreement, duly executed by the Applicant, which includes, among other things: (1) An agreement to comply with the federal securities laws, the rules and regulations thereunder, Nasdaq rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under Nasdaq rules; (2) an agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to Nasdaq rules; and (U) such other reasonable information with respect to the Applicant as Nasdaq may require.

In contrast, current General 3, Section 2(a) states simply that to become a Member of the Exchange an Applicant must seek approval in the form and manner prescribed by the Exchange. Relatedly, General 3, Section 4(a) provides a short list of documents that Applicants and Members may submit with their application for membership with the Exchange. Section 4(a) states that Members and Applicants shall file with (and be subject to review by) the Exchange, at a minimum, their partnership agreements and any subsequent amendments, in the case of partnerships; articles of incorporation, by-laws and their amendments, in the case of corporations; the articles of organization and operating agreements and their respective amendments, in the case of limited liability companies. The paragraph further provides that no action or failure by the Exchange to act shall be construed to mean that the Exchange has in any way passed on the investment merits of or approved the submitted document. The Exchange believes that deleting General 3, Section 4(a) is appropriate because the Exchange's current rule is ambiguous while Nasdaq Rule 1013(a)(1), which will be incorporated by reference, lists in detail all of the supplementary application materials required for submission by an Applicant . Incorporating this provision by reference will further standardize the Exchange's membership application process.

The Exchange's General 3, Section 5(a) provides that ISE members in good standing are eligible for Exchange membership in the same category of membership previously approved for on ISE. General 3, Section 5(b) states that applicants for Exchange membership who are not already ISE approved members must submit an application to the Exchange in accordance with Exchange procedures. The Exchange is proposing to delete General 3, Section 5(a) and (b) and to incorporate by reference Nasdaq Rule 1013(b)(1) and (2), Special Application Procedures, which outlines the criteria for a waive-in application when seeking membership with the Exchange, as further discussed below.

The Exchange proposes to delete the language in General 3, Section 5(b) which provides non-ISE members with at least sixty (60) days advance written notice of the date upon which the Exchange shall allocate options classes and appoint market makers pursuant to Exchange Options 2, Section 3 in order to ensure non-ISE Members have a reasonable opportunity to participate in those processes. The allocation process currently governed by Exchange Options 2, Section 3 requires a member to be an approved market maker in order to be appointed as such in options classes. The Exchange has aligned its options allocations process with those of its Affiliated Exchanges and, therefore, proposes to delete the aforementioned text as it no longer applies to applicants for Membership.

Exchange General 3, Section 5(b)(i) provides that to become a Member of the Exchange an Applicant shall file an application, which must be accompanied by a nonrefundable application fee. The Exchange proposes to delete Section 5(b)(i) because the provisions in this section are already included in Nasdaq Rule 1013, New Member Application which is being incorporated by reference.

The Exchange also believes that the provision under General 3, Section 5(b)(iii) that indicates that an applicant must be approved by the Exchange to perform in at least one of the recognized capacities of a Member as stated in General 3, Section 1(c) (discussed above when describing the incorporation by reference of Nasdaq Rule 1002) is substantially similar to the language contained in Nasdaq Rule 1013(a)(1)(D).

Nasdaq Rule 1013(a)(2) provides that the Membership Department will deem an application to be filed on the date when it is substantially complete, meaning the date on which the Membership Department receives from the Applicant all material documentation and information required under Rule 1013. This rule also provides that Nasdaq will notify the Applicant in writing when it deems the Applicant's application to be substantially complete. The Exchange's General 3, Section 5(b)(iv) contains a parallel, although brief, provision when describing the completion of the application process (''Upon completion of the application process, the Exchange shall consider whether to approve the application, unless there is just cause for delay'').

Nasdaq Rule 1013(a)(3) provides the procedure concerning incomplete applications (including the conditions necessary for the refund of application fees); and the request for additional documents or supporting information. Specifically, Nasdaq Rule 1013(a)(3)(A) (''Lapse of Applications that are not Substantially Complete'') provides that if an application that was initiated under 1013 is not deemed to be substantially complete by the Membership Department within 90 calendar days after an Applicant initiates it, then absent a showing of good cause by the Applicant, the Membership Department may, at its discretion, deem the application to have lapsed without filing, and the Membership Department will take no action in furtherance of the application. If the Membership Department deems an application to have lapsed, then the Membership Department shall serve a written notice of that determination on the Applicant. If an Applicant still wishes to apply for membership on Nasdaq after receiving notice of a lapse in its application, then the Applicant will be required to submit a new application pursuant to Nasdaq Membership Rules and pay a new application fee for doing so, if applicable. The Membership Department will refund fees that an

Applicant has paid to the Nasdaq in connection with a lapsed application, in accordance with Nasdaq rules regarding fees, provided that the Nasdaq has not proceeded to process the application at the time it lapses. The rule also provides that, for purposes of Rule 1013(a)(3)(A), the Membership Department will deem an application to be not ''substantially complete'' if the Applicant fails to submit to the Membership Department materially important information or documentation that is required or requested under these Rules.

Nasdaq Rule 1013(a)(3)(B) (''Rejection of Filed Applications that Remain or Become Incomplete After Filing'') provides that if an application that was initiated under Rule 1013 is substantially complete and thus is deemed to be filed with Nasdaq under Rule 1013(a)(2), but the application nevertheless remains or becomes incomplete with respect to any required or requested information or documentation, then the Membership Department shall serve written notice to the Applicant of such incompleteness and describe the missing information or documentation. If the Applicant fails to submit to Nasdaq the missing information or documentation within a reasonable period after it receives a notice of incompleteness, then absent a showing of good cause by the Applicant, the Membership Department may, at its discretion, reject the application. If the Membership Department rejects an application on the basis of incompleteness, then the Membership Department shall serve a written notice on the Applicant of the Membership Department's determination and the reasons therefor. Nasdaq shall not refund the application fees that an Applicant has paid to Nasdaq in connection with an application that Nasdaq rejects. If the Applicant determines to continue to seek membership on Nasdaq, then the Applicant shall submit a new application and pay a new application fee in accordance with Nasdaq rules.

The Exchange currently contains a provision related to the lapsing of membership applications. Pursuant to General 3, Section 5(b)(vi), if the membership application process is not completed within six (6) months of the filing of the application form and payment of the appropriate fee, the application shall be deemed to be automatically withdrawn. The Exchange plans to replace General 3, Section 5(b)(vi) by incorporating by reference Rule 1013(a)(3) which provides well-defined processes for the treatment of applications that become stale or result in the Applicant's failure to pursue membership by not responding to requests for additional information.

Nasdaq Rule 1013(a)(4) (''Requests by the Department for Additional Documents or Information from the Applicant or from Third Parties'') establishes that (A) at any time before the Membership Department serves its decision as to an application for new membership in Nasdaq, the Membership Department may serve a written request for additional information or documentation, from the Applicant or from a third party, if the Membership Department deems such information or documentation to be necessary to clarify, verify, or supplement the application materials. The Membership Department may, at its discretion, request that the Applicant or the third party provide the requested information or documentation in writing or through an in-person or telephonic interview. In the written request, the Membership Department shall afford the Applicant or the third party a reasonable period of time within which to respond to the request; moreover, (B) in the event that the Membership Department obtains information or documentation about an Applicant from a third party that the Membership Department reasonably believes could adversely impact its decision on an application, then the Membership Department shall promptly inform the Applicant in writing and provide the Applicant with a description of the information or a copy of the documentation that the Membership Department obtained, where appropriate under the circumstances. Prior to rendering an application decision on the basis of information or documentation obtained from a third party source, the Membership Department shall afford the Applicant with a reasonable opportunity to discuss or to otherwise address the information or documentation that the Membership Department obtained from the third party.

The provisions under the Nasdaq Rule 1013(a)(4) are similar to the Exchange's General 3, Section 4(a), to the extent that they describe the Exchange's authority to request additional documents or information from the Applicant or Member. Relatedly, General 3, Section (d) also provides the Exchange with authority to request Associated Persons to provide additional information or testimony. The Exchange believes that incorporating by reference Nasdaq Rule 1013(a)(4) into its membership rules will provide a greater degree of detail concerning the Exchange's discretion and authority to request additional information.

Nasdaq Rule 1013(b)(1) sets forth the procedure that allows an Applicant who is a FINRA member to ''waive-in'' to become an Exchange Member and to register with the Exchange all persons associated with it whose registrations FINRA has approved (in categories recognized by the Exchange's rules). This section defines the term ''waive-in'' to mean that the Membership Department will rely substantially upon FINRA's prior determination to approve the Applicant for FINRA membership when the Membership Department evaluates the Applicant for Exchange membership. That is, the Membership Department will normally permit a FINRA member to waive-into Exchange membership without conducting an independent examination of the Applicant's qualifications for membership on the Exchange, provided that the Membership Department is not otherwise aware of any basis set forth in Nasdaq Rule 1014 to deny or condition approval of the application.

The second special application process, which is set forth in Nasdaq 1013(b)(2), permits Applicants for Nasdaq membership that are already approved members of one or more of the affiliated exchanges to waive-into Nasdaq. In this context, ''waive-in'' means that the Membership Department will rely substantially upon an affiliated exchange's prior determination to approve the Applicant for Nasdaq membership. The procedures in Nasdaq Rule 1013(b)(2) for an Applicant to submit a waive-in application under this provision and for the Membership Department to issue a decision based upon such an application are identical to the procedures described above for FINRA members that seek to waive-into Nasdaq membership. Applicants who meet the criteria for this waive-in review process have already demonstrated their ability to meet membership standards on one or more of the affiliated exchanges which eliminates the need for a full review.

Nasdaq Rule 1013(b) (''Special Application Procedures'') was adopted by Nasdaq to expedite the membership application process of Applicants who were already members of FINRA or members of one of the affiliated exchanges. The Special Application Procedures also include updated provisions requiring compliance with Nasdaq's anti-money laundering rules.[14]

[14] *See* Securities Exchange Act Release No. 34–85513 (April 4, 2019), 84 FR 14429 (April 10, 2019) (SR–NASDAQ–2019–022).

The Exchange proposes to adopt by incorporation these same provisions to facilitate Applicants who meet the rule requirements. The adoption of this rule will offer members of FINRA, Nasdaq, BX, and ISE the option to apply for membership on the Exchange through an expedited membership application process.

Current Exchange rules do not allow this expedited process. However, today, this concept does exist in both the Exchange's and MRX General 3, Section 5. Both the Exchange and MRX rules afford an ISE Exchange member in good standing the ability to become an Exchange or MRX member of the same category without application. The Exchange believes that incorporating by reference Nasdaq's waive-in provisions will further the Exchange's objective to provide uniformity and clarity to its rules by aligning its membership application process with the Nasdaq, BX, and ISE exchanges. The current Exchange rule limits waive-in treatment to ISE members in good standing. Incorporating the substantially similar Nasdaq rule extends this same treatment equally across the Affiliated Exchanges by allowing waive-in treatment on the Exchange for not only ISE members but also for members of FINRA, Nasdaq, BX, and Phlx.[15]

The Exchange also proposes to delete current General 3, Section 5(d), as its placement under the membership rules is unnecessary. Exchange General 3, Section 5(d) contains declarative statements concerning the payments of fees and charges that Members are currently required to pay pursuant to the Exchange's General 2, Section 2 rule (''Fees, Dues and Other Charges'') and the Options 7 title (''Pricing Schedule'').

Similarly, the Exchange proposes to delete current General 3, Section 5(e). This rule provides that Exchange Members shall be subject to the regulatory jurisdiction of the Exchange under the Exchange Act and the Exchange rules, including without limitation the Exchange's disciplinary jurisdiction under General 5, Section 1. This provision is duplicative as it is substantially similar to existing Exchange General 5, Section 1 (''Disciplinary Jurisdiction'').

Rule 1014

Nasdaq Rule 1014 (''Department Decision'') describes the Membership Department's process for the issuance of a decision. The Exchange proposes to incorporate by reference Nasdaq Rule 1014 in its entirety as it provides a more organized, detailed, and logical description of the procedure currently described in General 3, Section 2 (in addition to the grounds for approval or disapproval referenced in General 3, Section 5(b)(iv) and (b)(v)). Incorporating Nasdaq Rule 1014 by reference in the Exchange's rules will improve the membership application and decision making process by better defining the Membership Department's authority and obligations, describing the basis for approval, conditional approval or denial of an application. Further, the Exchange believes that this proposed change provides consistency in the treatment of Exchange Applicants. Nasdaq Rule 1014(a) describes the Membership Department's authority to act on an application by approving it, denying it, or approving it subject to restrictions: (1) That are reasonably designed to address a specific (financial, operational, supervisory, disciplinary, investor protection, or other regulatory) concern; or (2) that mirror a restriction placed upon the Applicant by FINRA or an affiliated exchange.

Nasdaq Rule 1014(b), entitled ''Bases for Approval, Conditional Approval, or Denial,'' provides that the Membership Department will approve, grant conditional approval, or deny a membership application filed under Nasdaq Rules 1013 and 1017 by an Applicant that is not, and is not required to become, a FINRA member. Nasdaq Rule 1014(b)(1) indicates that the Membership Department may deny or condition membership approval for the same reasons that the Commission may deny or revoke a broker or dealer's registration; this Nasdaq Rule parallels existing General 3, Section 2(b), which describes the Exchange's authority to deny an application for the same reasons that the SEC may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Act.

Nasdaq Rule 1014(b)(2) enumerates the reasons for denial or conditional approval of a membership application in the cases when the Applicant (A) is unable to satisfactorily demonstrate its capacity to adhere to the Exchange and Commission rules; (B) has previously violated, and there is a reasonable likelihood that such Applicant will again engage in violative acts or practices, of any Exchange or Commission policies, rules, and regulations; (C) has engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood that such Applicant will again engage in violative acts or practices, of any Exchange or Commission policies, rules, and regulations; (D) is not in compliance with the Commission's net capital rule or has financial difficulties greater than 5% of their net worth; (E) has been itself, or is the successor to an entity subject to a bankruptcy, proceeding, receivership, or arrangement for the benefit of creditors within the past 3 years; (F) has engaged in an established pattern of failure to pay just debts; (G) does not hold required licenses or registrations; or (H) is unable to satisfactorily demonstrate reasonably adequate systems capacity and capability.

The Exchange notes that the basis for denial listed under its General 3, Section 2(c)(1), regarding an Applicant who has a negative net worth, has financial difficulties involving an amount that is more than five percent (5%) of the applicant's net worth, or has a pattern of failure to pay just debts (whether or not such debts have been the subject of a bankruptcy action), is parallel to Nasdaq Rule 1014(b)(2)(D). Similarly, the Exchange's basis for denial under General 3, Section 2(c)(2), regarding an Applicant unable satisfactorily to demonstrate a capacity to adhere to all applicable Exchange, SEC, the Clearing Corporation and Federal Reserve Board policies, rules and regulations, including those concerning record-keeping, reporting, finance and trading procedures, is parallel to Nasdaq Rule 1014(b)(2)(A). Finally, the provision under General 3, Section 2(c)(3), regarding an Applicant unable satisfactorily to demonstrate reasonably adequate systems capability and capacity, is parallel to Nasdaq Rule 1014(b)(2)(H).

Furthermore, the Exchange believes that the provisions under Nasdaq Rule 1014(b)(2)(A), (B), and (C), which describe the basis for a decision regarding the Applicant's inability to satisfy the Exchange and securities rules, previous violative conduct, and past or potential conduct inconsistent with just and equitable principles of trade, provide the Exchange with greater authority than the one described under General 3, Section 2(d), which provides that when an Applicant is a subject of an investigation conducted by any SRO or government agency involving its fitness for becoming a Member, the Exchange need not act on the application until the matter has been resolved.

The Exchange notes that current General 3, Section 2(e) and (f), which refer to the basis for membership denial as it relates to statutory disqualification, are substantially similar to Nasdaq Rule

[15] Currently Exchange members cannot waive-in to Phlx. Phlx will submit a separate proposal to amend its membership application rules to extend reciprocal waive-in treatment for Exchange members.

1002(b)(1) and (2), which describe an Applicant's ineligibility of certain persons for membership or association due to statutory disqualification. As stated above, the Exchange proposes to incorporate Nasdaq Rule 1002 in its entirety.

Nasdaq Rule 1014(b)(3) provides that the Membership Department will not approve an Applicant unless the Applicant is a member of another registered securities exchange or association that is not registered solely under Section 6(g) or Section 15A(k) of the Act. This rule also provides that an Applicant that will transact business with the public must be a member of FINRA. This requirement exists in the Exchange's rulebook in Options 10, Section 1 (''Exchange Approval''); however, to maintain harmonization of the rules, the Exchange proposes to incorporate by reference this same parallel rule. There are no proposed changes to rule text found in Exchange Options 10, Section 1 at this time.

The Exchange proposes to incorporate by reference Nasdaq Rule 1014(c) to establish the time and content of a decision and the recourse available to an Applicant if the Membership Department fails to timely issue a decision on a membership application. Current Exchange General 3, Section 5(b)(iv)), broadly prescribes that the Exchange will consider approval of the membership application, ''unless there is just cause for delay.'' Nasdaq Rule 1014(c) outlines this process in greater detail. The Nasdaq rule requires the Membership Department to serve a decision on the membership application within a reasonable time period, not to exceed 45 (calendar) days after the Applicant files and provides to the Exchange all required and requested information or documents in connection with the application. Additionally, the rule allows the Membership Department and the Applicant the ability to agree to further extensions of the decision deadlines. Nasdaq Rule 1014(c) also provides that the decision will detail the reason(s) for the denial of membership or the approval of the application subject to restrictions. This provision is similar to General 3, Section 5(b)(v), which currently establishes that the Exchange will inform the Applicant of the grounds for disapproval of a membership application. Moreover, if the Membership Department fails to timely issue a decision, the rule prescribes that the Applicant may request the Exchange Board to direct the Membership Department to issue a decision. The rule further provides that the Exchange Board, within seven days, will direct the Membership Department to serve its decision or to show good cause for a time extension. If the Membership Department shows good cause, the Exchange Board may grant the Membership Department up to 45 days to issue the decision.

Nasdaq Rule 1014(e) prescribes that service of the Membership Department's decision shall be made pursuant to Nasdaq Rule 1012. Further, the rule provides that the decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under Rule 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission. Current Exchange General 3, Section 5(b)(v) prescribes that a notice of the Exchange's decision shall be provided to the Applicant but does not specify the manner of such notification. In addition, Exchange General 3, Section 5(b)(vii) indicates that once an Applicant's membership becomes effective, the Exchange will promptly notify the Applicant of such decision. The Exchange believes that incorporating this rule by reference clarifies the process for serving the Membership Department's decision on applications.

Nasdaq Rules 1014(f) and (g), respectively, provide for the effectiveness of restrictions on an approved application and what constitutes final action in the Membership Department's decision. Rule 1014(f) establishes that a restriction imposed under Rule 1014 shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless (1) it is removed or modified by a decision constituting final action of the Exchange issued under Nasdaq Rules 1015, 1016, or 1017; or (2) stayed by the Exchange Review Council, the Exchange Board, or the Commission. Rule 1014(g) provides that unless the Applicant files a written request for a review under Rule 1015, the Membership Department's decision shall constitute final action by Nasdaq.

Rule 1015

The Exchange proposes to incorporate by reference Nasdaq Rule 1015 in its entirety under its General 3 title. Nasdaq Rule 1015, subsections (a) through (j) are substantially similar to the current provisions concerning a review by the Exchange Review Council detailed in Exchange General 3, Section 2(g).[16]

Current Exchange General 3, Section 2(g) (formerly Exchange Rule 302(g)) was amended in 2019[17] to base the Exchange's procedures on those set forth in Nasdaq and BX Rules 1015 and 1016 (which were identical to Nasdaq's and now incorporate by reference the Nasdaq Membership rules[18]). The Exchange believes that incorporating by reference Nasdaq Rule 1015 it will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

The Exchange proposes also to incorporate by reference Nasdaq Rule 1015(k) and (l) (respectively, ''Ex Parte Communications'' and ''Recusal or Disqualification''). Both paragraphs (k) and (l) were, respectively, previously located under Nasdaq Rule 1012(c) and (d) but were moved to their current location in the Nasdaq rulebook as the two provisions logically fit within the section of the membership rules that govern appeals of membership decisions.[19] Nasdaq Rule 1015(k) prohibits *ex parte* communications involving membership decisions subject to review among certain Exchange staff, members of the Exchange Review Council, members of a Subcommittee of the Council, and the Board of Directors. Nasdaq Rule 1015(l) governs the recusal and disqualification of a member of the Exchange Review Council, a Subcommittee thereof, or the Board of Directors from participating in a review of a membership decision. The Exchange has no parallel provisions in its rulebook to Nasdaq Rule 1015(k) and (l). The Exchange believes that incorporating Rule 1015(k) and (l) by reference enhances the Exchange Review Council's procedures and is in line with the Exchange's goal of harmonizing its rules with those of the Nasdaq, BX, and ISE exchanges.

Rule 1016

Aside from their respective internal cross-references, the text in Nasdaq Rule 1016 and Exchange General 3, Section 2(h) (both entitled ''Discretionary Review by the Exchange Board'') are identical. The Exchange proposes to

[16] The Exchange notes that, recently, Nasdaq adopted Rule 1015(f)(5) which provides for the Exchange Review Council to conduct its hearings via video conferencing. *See* Securities Exchange Act Release No. 34–90390 (November 10, 2020), 85 FR 73302 (November 17, 2020) (SR–NASDAQ–2020–076). The Exchange has adopted an identical provision under General 3, Section 2(g)(6)(E). *See* Securities Exchange Act Release No. 34–90755 (December 21, 2020), 85 FR 85819 (December 29, 2020) (SR–GEMX–2020–21).

[17] *See* Securities Exchange Act Release No. 34–86346 (July 10, 2019), 84 FR 33999 (July 16, 2019) (SR–GEMX–2019–08).

[18] *See supra* note 4.

[19] *See supra* note 14.

incorporate by reference Nasdaq Rule 1016 under its General 3 title. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Rule 1017

Nasdaq Rule 1017, ''Application for Approval of Change in Ownership, Control, or Material Business Operations,'' has no analogue rule in the Exchange's current General 3 title. Incorporating Nasdaq Rule 1017 by reference in its entirety in the Exchange's rules will enhance the Exchange's ongoing regulatory oversight capabilities by clearly identifying events that would trigger the requirement for an approved Member to file an application with the Exchange. As stated below, Nasdaq Rule 1017 outlines in detail the circumstances that trigger the filing of an application pursuant to this rule. While the Exchange has no corresponding rule, it does have a similar process in place that it administers procedurally. For example, if an existing Electronic Access Member of the Exchange is seeking market maker status for the first time, the current Exchange process is to require that the Member submit an amended Exchange application along with relevant supplementary material. The Exchange believes that incorporating Nasdaq Rule 1017 by reference and harmonizing its process with that of Nasdaq, BX, and ISE will improve its current practice by further streamlining its current practices. As stated previously, the objective is to eventually harmonize membership rules across all Affiliated Exchanges in order to advance uniformity within the membership rules and procedures.

Nasdaq Rule 1017(a) prescribes the events that require Members to file applications with the Exchange. Paragraph (a) provides that a Member shall file an application for approval prior to effecting the following changes: (1) A merger of the Member with another Member; (2) a direct or indirect acquisition by the Member of another Member; (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the Member's assets or any asset, business line or line of operations that generates revenues comprising 25% or more in the aggregate of the Member's earnings measured on a rolling 36 month basis; (4) a change in the equity ownership or partnership capital of the Member that results in one person or entity directly or indirectly owning or controlling 25% or more of the equity or partnership capital; or (5) a material change in business operations, which consist of (A) removing or modifying a membership restriction; (B) acting as a dealer or a market maker for the first time; (C) adding business activities that require a higher minimum net capital under SEC Rule 15c3–1; or (D) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in the Rule 1000 Series.

Nasdaq Rule 1017(b), governs the filing and content of applications filed under Nasdaq Rule 1017. This Rule provides that the application should be filed with the Membership Department; if the Applicant seeks approval of change of ownership or control or a material change in the Member's business operations, the application should (A) provide a detailed description of the proposed change, (B) provide a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the proposed change; and (C) if the application requests approval of a change in ownership or control, the application also shall include the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member.

Furthermore, Nasdaq Rule 1017(b) provides that if the application requests the removal or modification of a membership restriction, the application also shall, (A) present facts showing that the circumstances that gave rise to the restriction have changed; and (B) state with specificity why the restriction should be modified or removed in light of the applicable bases for denial or standards for approval set forth in Nasdaq Rules 1014 or 1017 and the articulated rationale for the imposition of the restriction. Moreover, the Rule indicates that if the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.

Nasdaq Rule 1017(c) indicates when an application shall or may be filed. Specifically, the Rule provides that (1) an application for approval of a change in ownership or control shall be filed at least 30 days prior to such change; (2) that an application to remove or modify a membership restriction may be filed at any time (clarifying that an existing restriction shall remain in effect during the pendency of the proceeding); and that (3) an application for approval of a material change in business operations, other than the modification or removal of a restriction, may be filed at any time, but the Member may not effect such change until the conclusion of the proceeding, unless the Membership Department and the Member otherwise agree.

Nasdaq Rule 1017(d) prescribes that an application will be deemed to be filed on the date when it is substantially complete, meaning the date on which the Membership Department receives from the Applicant all material documentation and information required under this Rule, and that the Membership Department will notify the Applicant in writing when the Membership Department deems the Applicant's application to be substantially complete.

Nasdaq Rule 1017(e) indicates that, pursuant to Nasdaq Rule 1013(a)(3), the Membership Department may treat an application filed under this Rule as having lapsed or it may reject such an application, except that the Membership Department may treat an application as having lapsed if it is not substantially complete for 30 days or more after the Applicant initiates it.

Nasdaq Rule 1017(f) provides that the Membership Department, at any time before it serves its decision, may request additional information or documentation from the Applicant or from a third party in accordance with Nasdaq Rule 1013(a)(4).

Nasdaq Rule 1017(g) establishes that a Membership Department's decision shall be issued in accordance with Nasdaq Rule 1014, except that (1) In rendering a decision on an application submitted under the Rule that requests the modification or removal of a membership restriction, the Membership Department shall consider whether maintenance of the restriction is appropriate in light of: (A) The applicable bases for denial or standards for approval set forth in Nasdaq Rule 1014; (B) the circumstances that gave rise to the imposition of the restriction; (C) the Applicant's operations since the restriction was imposed; (D) any change in ownership or control or supervisors and principals; and (E) any new evidence submitted in connection with the application. Furthermore, this Rule provides that the Membership Department shall serve a written decision on an application filed under this Rule in accordance with Nasdaq Rule 1013(c). Moreover, the Rule provides that in the event that a proposed change in ownership, control, or business operations by a Member requires such Member to become a member of FINRA, the Membership Department shall not be required to

serve a written decision under this Rule until 10 business days after the Member becomes a FINRA member.

Nasdaq Rule 1017(h) provides that service of the decision on the Applicant in accordance with Nasdaq Rule 1012. Moreover, the Rule indicates that the decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under Rules 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission.

Nasdaq Rule 1017(i) indicates that an Applicant may file a written request for review of the Membership Department's decision with the Exchange Review Council pursuant to Nasdaq Rule 1015, the rule further clarifies that the procedures set forth in Nasdaq Rule 1015 shall apply to such review, and the Exchange Review Council's decision shall be subject to discretionary review by the Exchange Board pursuant to Nasdaq Rule 1016. If the Applicant does not file a request for a review, the Membership Department's decision shall constitute final action by Nasdaq.

Nasdaq Rule 1017(j) prescribes that the Membership Department shall modify or remove a restriction on its own initiative if the Membership Department determines such action is appropriate in light of the considerations set forth in paragraph (g)(1) of the Rule. The Membership Department shall notify the member in writing of the Membership Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph Rule 1017(a).

Rule 1018

Nasdaq Rule 1018, ''Resignation, Reinstatement, Termination, and Transfer of Membership,'' has no analogue rule in the Exchange's current General 3 title, with the exception of Exchange General 3, Section 5(c). The Exchange proposes to incorporate the rule by reference under its General 3 title. Nasdaq Rule 1018 outlines the process for resignation, reinstatement, termination, and transfers of memberships. Incorporating Nasdaq Rule 1018 by reference will eventually allow the Exchange to standardize the processing of these requests across all the Affiliated Exchanges.

Nasdaq Rule 1018(a) provides that membership in Nasdaq may be voluntarily terminated only by formal resignation. Resignations of Members must be filed via electronic process or such other process as the Exchange may prescribe. Any Member may resign from Nasdaq at any time. Such resignation shall not take effect until all indebtedness due to Nasdaq from such Member shall have been paid in full and so long as any complaint or action is pending against the Member under the Rules. Nasdaq, however, may in its discretion declare a resignation effective at any time.

Nasdaq Rule 1018(b) indicates that no Member may transfer its membership or any right arising therefrom; the membership of a corporation, partnership, or any other business organization that is a Member shall terminate upon its liquidation, dissolution, or winding up; and the membership of a sole proprietorship that is a Member shall terminate at death, provided that all obligations of membership under the Rules have been fulfilled. The Exchange proposes to incorporate Nasdaq Rule 1018(b) by reference and to delete Exchange General 3, Section 5(c), which is substantially similar to this provision. Moreover, the Rule provides that the consolidation, reorganization, merger, change of name, or similar change in any corporate Member shall not terminate the membership of such corporate Member, provided that the Exchange Member or surviving corporation, if any, shall be deemed a successor to the business of the corporate Member, and the Member or the surviving organization shall continue in the securities business, and shall possess the qualifications for membership in the Exchange. Furthermore, the death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership Member shall not terminate the membership of such partnership Member, provided that the Member or surviving organization, if any, shall be deemed a successor to the business of the partnership Member, and the Member or surviving organization shall possess the qualifications for membership in the Exchange. If the business of any predecessor Member is to be carried on by an organization deemed to be a successor organization by the Exchange, the membership of such predecessor Member shall be extended to the successor organization subject to the notice and application requirements of the Rules and the right of the Exchange to place restrictions on the successor organization pursuant to the Rules; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of the Exchange's Rules.

Nasdaq Rule 1018(c) establishes that any membership or registration suspended or canceled under the Rules may be reinstated by the Exchange upon such terms and conditions as are permitted under the Act and the Exchange rules; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the Exchange.

Rule 1019

Nasdaq Rule 1019 (''Application to Commission for Review'') has no analogue rule in the Exchange's current General 3 title. Nasdaq Rule 1019 allows Applicants to request the Commission to review an Exchange final action, as provided under the Nasdaq Rule 1010 Series. Incorporating Nasdaq Rule 1019 by reference standardizes the process by which an Applicant may dispute any final action of the Exchange.

Nasdaq Rule 1019 provides that a person aggrieved by a Nasdaq's final action under Nasdaq Membership Rules may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of the Exchange, unless the Commission otherwise orders.

Revised Membership Application

As part of the harmonization of its membership rules and procedures with those of Nasdaq, BX, and ISE, the Exchange is adopting a standardized Broker-Dealer Membership Application (''Membership Application''). The Membership Application is submitted as Exhibit 3A of this proposed rule change with underlined changes concerning the GEMX market. Each Exchange Membership Application will be accompanied by a ''Membership Agreement'' (submitted as Exhibit 3B of the attached), which should be signed by all applicants to membership with the Exchange.

Conclusion

The changes proposed herein will allow the Exchange to harmonize its membership rules and processes with those of Nasdaq, BX, and ISE, and ultimately, with the other Affiliated Exchanges, which will eventually provide a uniform criteria across the Affiliated Exchanges for membership qualifications and a consistent process across the Affiliated Exchanges for processing membership applications. The proposal will also provide for full

membership reciprocity between Nasdaq, BX, ISE, and the Exchange—and hopefully, in time, across all of the Affiliated Exchanges—so that a member of one Affiliated Exchange would receive expedited treatment in applying for membership on any other Affiliated Exchange. Similarly, harmonized membership rules and processes will benefit Exchange Applicants and Members by establishing consistent membership requirements and processes that must be followed to apply for membership on the Exchange.

Moreover, as to the Exchange itself, the proposed changes described herein will render the Exchange's membership rules and processes clearer, better organized, simpler, and easier to comply with. Again, such changes will provide benefits both to the Exchange's Membership Department and to Exchange Applicants.

The proposed membership rules and processes are substantially similar to the existing rules and process, and where there are differences between the new and old processes, the Exchange believes that the new process does not disadvantage its Members or Associated Persons. To the contrary, the Exchange believes that the new rules and processes will benefit all parties as it again provides greater clarity, simplicity, and efficiency than the retired rules and processes.

Implementation

To facilitate an orderly transition from the existing rules under the General 3 title and the Nasdaq Membership Rules to be incorporated by reference, the Exchange is proposing to apply the existing Rules to all applications which have been submitted to the Exchange (including applications that are not yet complete) and are pending approval prior to the operative date. The Exchange also will apply the existing Rules to any appeal of an Exchange membership decision or any request for the Board to direct action on an application pending before the Exchange Review Council, the Board, or the Commission, as applicable. As a consequence of this transition process, the Exchange will retain the existing processes during the transition period until such time that there are no longer any applications or matters proceeding under the existing rules. To facilitate this transition process, the Exchange will retain a transitional rulebook that will contain the Exchange's membership rules as they are at the time that this proposal is filed with the Commission. This transitional rulebook will apply only to matters initiated prior to the operational date of the changes proposed herein and it will be posted to the Exchange's public rules website. When the transition is complete, the Exchange will remove the transitional rulebook from its public rules website.

The Exchange will announce and explain this transition process in a regulatory alert.

The Exchange notes that Nasdaq and BX applied the same process described above to govern its transition to its amended membership rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) and of the Act,[21] 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. It is also consistent with Section 6(b)(7) of the Act in that it provides for a fair procedure for denying Exchange membership to any person who seeks it, barring any person from becoming associated with an Exchange Member, and prohibiting or limiting any person with respect to access to services offered by the Exchange or a Member thereof.[22]

As a general matter, the Exchange believes that its proposal to delete its existing membership rules, incorporate by reference the Nasdaq Membership Rules, and other related changes will promote a free and open market, and will benefit investors, the public, and the markets, because the new rules will be clearer, better organized, and simpler.

The proposal is just and equitable because it will render the Exchange's membership rules easier for Applicants and Members to read and understand, including by doing the following:

- Establishing a ''roadmap'' paragraph as shown in Nasdaq Rule 1014(a) that sets forth the basic authority of the Membership Department to approve, approve with conditions, or deny applications for membership before the Rule goes on to enumerate criteria for the Membership Department to apply when taking each of those actions;
- Making the titles of the rules more accurate and descriptive (*e.g.,* Nasdaq Rule 1014(b));
- Grouping logically-related provisions together in the rules (*e.g.,* provisions governing resignation, termination, transfer, and reinstatement of membership) and recusals and disqualifications;
- Clarifying when the Membership Department will deem an application to be filed (when the application is ''substantially complete,'' as set forth in Nasdaq Rule 1013(a)(2)) and by requiring the Membership Department to notify an Applicant in writing of the filing date;
- Clarifying what the Exchange means when it states that an Applicant may ''waive-in'' to Exchange membership (as set forth in Nasdaq Rule 1013(b)); and

The proposal will also make compliance with the membership rules simpler and less burdensome for Applicants and Members by, for example, doing the following:

- Eliminating obsolete requirements to submit paper copies of Forms U–4 and BD or explain information listed on the forms where the Membership Department already has electronic access to the Forms and the information contained therein;
- Permitting electronic filing of applications (Nasdaq Rule 1012(a)(1));
- Allowing payment of application fees by means other than paper check (Nasdaq Rule 1013(a)(1)(C));
- Harmonizing disparate procedures under Nasdaq Rules 1013 and 1017 for filing, evaluating, and responding to initial membership applications and applications for approval of business changes;
- Detailing the circumstances in which an Applicant may waive-into Exchange membership to include the Applicant's membership in any of the affiliated exchanges and defining procedures for processing and responding to waive-in applications (Nasdaq Rule 1013(b));

In sum, the foregoing changes will update, rationalize, and streamline the Exchange's membership rules and processes, all to the benefit of Applicants and Members. Moreover, these changes will not adversely impact the rights of Applicants or Members to appeal adverse Membership Department decisions under these Rules or to request Board action to compel the Membership Department to render decisions on applications.

Last, the Exchange believes that its proposal to phase-in the implementation of the new membership rules and processes is consistent with Section 6(b)(7) of the Act[23] because both the current and proposed processes provide fair procedures for granting and denying applications for becoming an

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(7).

[23] 15 U.S.C. 78f(b)(7).

Exchange Member, becoming an Associated Person, and making material changes to the business operations of a Member. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new applications, appeals, and requests for Board action that are initiated on or after that implementation date. Any application, appeal, or request for Board action initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will maintain a transitional rulebook on the Exchange's public rules website which will contain the Exchange Rules as they are at the time of filing this rule change. These transitional rules will apply exclusively to applications, appeals, and requests for Board action initiated prior to the implementation date. Upon conclusion of the last decision on a matter to which the transitional rules apply, the Exchange will remove the defunct transitional rules from its public rules website. Thus, the transition will be conducted in a fair, orderly, and transparent manner. Lastly, the proposed transition process is the same process that Nasdaq and BX implemented during its transition to new membership rules.

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. The Exchange does not expect that its proposed changes to the membership rules will have any competitive impact on its existing or prospective membership. The proposed changes will apply equally to all similarly situated Applicants and Members and they will confer no relative advantage or disadvantage upon any category of Exchange Applicant or Member. Moreover, the Exchange does not expect that its proposal will have an adverse impact on competition among exchanges for members; to the contrary, the Exchange hopes that by clarifying, reorganizing, and streamlining its membership rules, the Exchange's membership process will be less burdensome for Applicants and Members and the Exchange will improve its competitive standing relative to other exchanges.

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[24] and subparagraph (f)(6) of Rule 19b–4 thereunder.[25]

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 (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–GEMX–2021–02 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–GEMX–2021–02.* 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 (*http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–GEMX–2021–02* and should be submitted on or before May 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

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[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 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.

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91674; File No. SR–MRX–2021–03]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete the Exchange Membership Rules and Incorporate by Reference the Membership Rules of The Nasdaq Stock Market LLC

April 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on April 13, 2021, 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 delete the Exchange's membership rules currently under the General 3 title, incorporate by reference The Nasdaq Stock Market LLC's (''Nasdaq'') rules in the General 3 Rule 1000 Series, and other related changes.

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

General 3 of the Exchange's General Rules and Nasdaq's General 3, Rules 1000 Series prescribe the qualifications and procedures for applying for membership, respectively, on the Exchange and Nasdaq. The Exchange proposes to delete in their entirety the rules under its General 3 title, entitled ''Membership and Access,'' and incorporate by reference the Nasdaq General 3, Rules 1000 Series (the ''Nasdaq Rule 1000 Series'' or ''Nasdaq Membership Rules'') as described below.[3] The Exchange will also relocate the text under its rule under General 3, Section 4(b) and place it under new Exchange General 2, Section 11, as further described below.

This proposal is part of the Exchange's plan to harmonize its membership rules with the membership rules of the Nasdaq, Nasdaq BX, Inc. (''BX''), and Nasdaq ISE, LLC (''ISE'') exchanges.[4] The Exchange notes that Nasdaq GEMX, LLC, and Nasdaq Phlx, LLC (''Phlx'') (together with Nasdaq, BX, and ISE, the ''Affiliated Exchanges'') each plan to propose similar rule changes that will render their membership rules substantially similar to those of Nasdaq, BX, and ISE. To account for any differences that may exist, the proposed introductory paragraphs list instances in which cross references in the Nasdaq Series 1000 Rules to other Nasdaq rules shall be read to refer instead to the Exchange Rules, and references to Nasdaq terms (whether or not defined) shall be read to refer to the Exchange-related meanings of those terms. For instance, references to defined terms ''Exchange'' or ''Nasdaq'' shall be read to refer to the Nasdaq MRX Exchange; ''Rule'' or ''Exchange Rule'' shall be read to refer to the Exchange Rules; the defined term ''Applicant'' in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant to the Nasdaq MRX Exchange; the defined terms ''Board'' or ''Exchange Board'' in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq MRX Board of Directors; the defined term ''Director'' in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Nasdaq MRX Exchange; the defined term ''Exchange Review Council'' in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq MRX Exchange Review Council; the defined term ''Subcommittee'' in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Nasdaq MRX Exchange Review Council; the defined term ''Interested Staff'' in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Nasdaq MRX; the defined term ''Member'' in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq MRX Member who acts in its capacity as an Electronic Access Member, a Primary Market Maker, or a Competitive Market Maker (including a ''Foreign Member,'' as defined under proposed MRX General 3); the defined term ''Associated Person'' shall be read to refer to a Nasdaq MRX Associated Person; the defined terms ''Exchange Membership Department'' or ''Membership Department'' shall be read to refer to the Nasdaq MRX Membership Department; and the defined term ''Exchange Regulation Department'' shall be read to refer to the Nasdaq MRX Regulation Department.

Additionally, cross references in the Nasdaq Rule 1000 Series to ''General 1 and Equity 1'' shall be read as references to Nasdaq MRX General 1, Section 1; cross references in the Nasdaq Rule 1000 Series to ''General 9, Section 20'' shall be read as references to Nasdaq MRX Options 10, Section 5(c)(2); cross references in the Nasdaq Rule 1000 Series to ''General 9, Section 37'' shall be read as references to Nasdaq MRX Options 9, Section 21; and cross references to the ''General 4, Rule 1200 Series'' shall be read as references to Nasdaq MRX General 4, Section 1.[5]

Finally, as explained below, the introductory paragraph will indicate that the Nasdaq Rule 1000 Series shall also apply to Nasdaq MRX Members who meet the requirements of a ''Foreign Member.''

As compared to the Exchange's existing General 3, by virtue of incorporating by reference the Nasdaq Membership Rules into the Exchange's rulebook, the Exchange's membership rules will be organized in a more logical order. The incorporated rules will eliminate unnecessary or vague provisions that exist under the current General 3 title, eliminate unnecessary complexity in the membership process, and otherwise streamline the Exchange's existing membership rules and their associated procedures.

Summary of Proposed Changes

A comparison between the Exchange's existing General 3 and the Nasdaq Membership Rules is summarized below. As a general matter, in comparison to the Exchange's existing membership rules, the Nasdaq Membership Rules provide for more specific membership procedures and due process. Moreover, as described below, some of the Nasdaq Rule 1000

[3] The Exchange will separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to General 3 to the extent such rules are effected solely by virtue of a change to the Nasdaq Rule 1000 Series. The Exchange's proposed rule change will not become effective unless and until the Commission approves this exemption request.

[4] The BX membership rules were previously amended to incorporate by reference Nasdaq's membership rules. *See* Securities Exchange Act Release No. 34–86425 (July 22, 2019), 84 FR 36139 (July 26, 2019) (SR–BX–2019–022). ISE also filed a proposal to incorporate by reference Nasdaq's membership rules. *See* Securities Exchange Act Release No. 34–90903 (January 12, 2021), 86 FR 5284 (January 19, 2021) (SR–ISE–2020–43).

[5] The Exchange notes that its General 4 title (entitled ''Regulation'') currently incorporates by reference the rules contained in Nasdaq's General 4 title. *See* Securities Exchange Act Release No. 34–85730 (April 26, 2019), 84 FR 18903 (May 2, 2019) (SR–MRX–2019–09).

Series rules have no analogue in the existing Exchange rules. Finally, as explained later, the Exchange will also relocate the text under General 3, Section 4(b) to new Exchange General 2, Section 11.

Rule 1001

Nasdaq Rule 1001 states that Nasdaq and the Financial Industry Regulatory Authority (''FINRA'') are parties to a Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 1000 Series and the General 4, Rule 1200 Series on behalf of Nasdaq.[6] Moreover, Nasdaq Rule 1001 provides that Nasdaq rules that refer to Nasdaq's Regulation Department, Nasdaq Regulation Department staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

Nasdaq Rule 1001 also provides that, notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions. In addition, the rule informs that Nasdaq has incorporated by reference certain FINRA rules and that Nasdaq members shall comply with those rules and interpretations as if such rules and interpretations were part of Nasdaq's Rules.

The Exchange is proposing to incorporate by reference Nasdaq Rule 1001, which currently has no analogue rule under its membership rules. The language of Nasdaq Rule 1001 is applicable to the Exchange, as the Exchange is, similarly, a signatory of a Regulatory Contract with FINRA, pursuant to which FINRA has agreed to perform certain membership functions on its behalf, and also retains the ultimate legal responsibility for the performance of said functions. The Exchange believes that the incorporation by reference to Nasdaq Rule 1001 is not a substantive amendment to the Exchange rules.

Rule 1002

Nasdaq Rule 1002, which will be incorporated by reference under the Exchange's General 3 title, describes the qualifications of Nasdaq members and associated persons, the registration of branch offices, and the designation of a Member's office of supervisory jurisdiction. The Exchange will adopt by incorporation the provisions of Nasdaq Rule 1002 and delete those under current General 3, Section 1. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Nasdaq Rule 1002(a) provides that any registered broker or dealer shall be eligible for membership in Nasdaq (except for those excluded under paragraph (b) of the rule); additionally, paragraph (a) provides that any person shall be eligible to become an Associated Person of a Member (except for those excluded under Rule 1002(b)). Rule 1002(a) is similar to General 3, Section 1(a) of the Exchange's membership rules to the extent that it describes that brokers or dealers may become Exchange members (''Members''), which in turn entitles them to conduct their business on the Exchange. General 3, Section 1(a) provides that the Exchange shall issue memberships conferring the ability to transact on the Exchange. Exchange General 3, Section 1(a) also provides that there is no limit on the number of memberships that may be issued by the Exchange and that, under the rule, the Exchange shall not act in a manner that does not comply with the provisions of Section 6(c)(4) of the Exchange Act. Similarly, the Nasdaq Rule 1000 Series does not establish a limit to the number of memberships issued and conducts its review of applications for membership pursuant to the Securities Exchange Act of 1934. Furthermore, General 3, Section 1(a) provides that a Member may be a corporation, partnership, or limited liability company, and must be a registered broker-dealer and meet the qualifications for Exchange membership. The Exchange believes that incorporating by reference Nasdaq Rule 1002(a) expands upon Exchange General 3, Section 1(a) by including an associated person of a Member (''Associated Person'') under this threshold requirement.

The Exchange's General 3, Section 1(b) provides that a Member that does not maintain an office in the United States (''Foreign Member'') that is responsible for preparing and maintaining financial and other reports required to be filed with the Commission and with the Exchange must prepare such reports in English and in U.S. dollars, reimburse the Exchange for any expense incurred in examining the Member to the extent that such expense is in excess of the cost associated with examining a Member located within the continental United States, and ensure the availability of an individual who is fluent in English and knowledgeable in securities and financial matters to assist representatives of the Exchange during examinations. Nasdaq General 9, Section 50 is a Nasdaq rule substantially similar to the provisions in General 3, Section 1(b). In order to preserve the enumerated characteristics of a Foreign Member, which would otherwise be deleted from its Rulebook by incorporating by reference the Nasdaq Rule 1000 Series, the Exchange proposes to include the text of its General 3, Section 1(b) under the General 3's introductory paragraph and indicate that the Nasdaq Membership Rules will also apply to the members who meet the Foreign Member requirements.

Furthermore, General 3, Section 1(c) provides that every Member shall have as the principal purpose of being a Member the conduct of a securities business, and that purpose shall be deemed to exist if and so long as: (1) The Member has qualified and acts in respect of its business on the Exchange in one or more of the following capacities: (i) an Electronic Access Member; (ii) a Primary Market Maker; or (iii) a Competitive Market Maker; and (2) all transactions effected by the Member are in compliance with Section 11(a) of the Exchange Act and the rules and regulations adopted thereunder. The Exchange believes that the membership qualifications described in this section are consistent with the eligibility criteria described in Nasdaq Rule 1002 and the disclosures and information provided by Applicant pursuant to Nasdaq Rule 1013. To account for the Exchange rights referenced in Section 1(c) (Electronic Access Member, Primary Market Maker, or Competitive Market Maker), as defined under the Exchange's Options 1, Section 1 provisions, the Exchange will also indicate in the proposed General 3 introductory paragraph that the defined term ''Member'' in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq MRX Member who acts in its capacity as an Electronic Access Member, a Primary Market Maker, or a Competitive Market Maker.

Nasdaq Rule 1002(b)(1) establishes that subject to such exceptions as may be explicitly provided elsewhere in the Nasdaq rules, no registered broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if such broker, dealer, or Member fails or ceases to satisfy the qualification requirements established

[6] Nasdaq's General 4, Section 1 (Registration, Qualification and Continuing Education) is currently incorporated by reference into the Exchange's General 4 title. *See supra* note 5.

by Nasdaq rules, or if such broker, dealer, or Member is or becomes subject to a statutory disqualification, or if such broker, dealer, or Member fails to file such forms as may be required in accordance with such process as Nasdaq may prescribe. Nasdaq Rule 1002(b)(1) can be compared to the provision currently under Exchange's General 3, Section 2(b) that establishes that the Exchange may deny or condition the approval of a Member, or preclude or condition a person from becoming associated with a Member, for the same reasons that the Commission may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Act. Furthermore, the requirement to comply with Nasdaq rules under Section (b)(1), is also consistent with the provision under Exchange General 3, Section 4(c) that states that every Member shall pledge to abide by the by-laws and rules of the Exchange, as amended from time to time, and by all Options Regulatory Alerts, notices, directives or decisions adopted pursuant to or made in accordance with the Exchange's by-laws and rules.

Nasdaq Rule 1002(b)(2) establishes that, subject to such exceptions as may be explicitly provided elsewhere in Nasdaq rules, no person shall become associated with a Member, continue to be associated with a Member, or transfer association to another Member, if such person fails or ceases to satisfy the qualification requirements established by Nasdaq rules, or if such person is or becomes subject to a statutory disqualification; and no broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if any person associated with it is ineligible to be an Associated Person under Nasdaq Membership Rules. Nasdaq Rule 1002(b)(2) is similar to the requirement that applies to Associated Persons under General 3, Section 3(a) of the Exchange rules. The Exchange's General 3, Section 3 rules enumerate conditions that apply to persons associated with Members of the Exchange. Exchange General 3, Section 3(a) provides that Associated Persons are bound by the Exchange's by-laws and rules and the rules of the Clearing Corporation and describes the circumstances concerning the barring of an Associated Person in such role. Exchange General 3, Sections 2(b), 3(a), and 4(c) are, substantially similar to the provisions of Nasdaq Rule 1002(b),[7] which the Exchange proposes be incorporated by reference into its membership rules. The Exchange notes that General 3, Section 3(b) requires that Members file and keep current a list of its associated persons who are its executive officers, directors, principals, shareholders, and general partners. A Member's obligation to maintain updated information for their registered representatives or principals is prescribed under Nasdaq's General 4 title which was previously incorporated by reference into the Exchange rules,[8] rendering Exchange General 3, Section 3(b) unnecessary.

Exchange General 3, Section 3(c) provides that a claim of any Associated Person described in the first sentence of General 3, Section 3(b) (*i.e.,* a Member's executive officers, directors, principal shareholders, and general partners) against a Member shall be subordinate in right of payment of customers and other Members. This subordination rule was copied from ISE's then-current Rulebook at the time, but was never directly applicable to MRX. The rule was originally approved as part of ISE's Form 1 filing on February 24, 2000.[9] At that time, ISE members had equity ownership interest in ISE through their memberships and the subordination language was relevant. ISE has since demutualized, with its members no longer having any equity ownership interest through their ISE memberships, and has deleted this language as obsolete.[10] Because MRX members never had a similar ownership interest through their MRX memberships, this rule did not apply to MRX in the first place. As such, the Exchange proposes to delete this provision in its entirety.

Nasdaq Rule 1002(c) establishes, as a condition to maintaining Nasdaq membership, that Members shall at all times maintain membership in a registered securities association or another registered exchange. Furthermore, the rule prescribes that Members that transact business with customers shall at all times be members of FINRA. The Exchange proposes to incorporate this rule by reference. Because the Exchange does not act in the capacity of a designated examining authority (''DEA''), like the Nasdaq, BX, and ISE, it requires that all applicants for membership have an assigned DEA in place as a condition of its membership.

Nasdaq Rule 1002(d) states that Nasdaq members are deemed to comply with Nasdaq's branch office registration requirements to the extent that they keep current a Uniform Branch Office Registration Form (''Form BR''), which contains the requisite information and which is accessible electronically to Nasdaq. Members that are not FINRA members shall continue to submit to Nasdaq a Branch Office Disclosure Form, as they have done previously. The Exchange proposes to incorporate by reference this rule, which is consistent with the provisions under the Exchange's Options 10, Section 5, entitled Branch Offices.[11] The Exchange proposes that the cross-reference in Nasdaq Rule 1002(d)(2) to General 9, Section 20 shall be read as a reference to Exchange Options 10, Section 5(c)(2).

Rule 1011

Nasdaq Rule 1011 contains definitions applicable to the Nasdaq Membership Rules. Nasdaq Rule 1011 has no analogue rule in the existing Exchange's General 3 title. By incorporating by reference the Nasdaq definitions under Rule 1011, the Exchange believes it will further harmonize its rules with respect to the membership rules of Nasdaq, BX, and ISE. The Exchange notes that the defined terms in Nasdaq Rule 1011, to be incorporated by reference into the Exchange's rules, are self-contained and have no impact on MRX rules outside its membership rules. The terms ''Applicant,'' ''Department,'' ''Director,'' ''Interested Staff,'' ''Securities business,'' ''Exchange Board,'' ''principal place of business,'' ''registered broker or dealer,'' ''Representative,'' ''sales practice event,'' ''Subcommittee,'' and ''statutory disqualification'' have not been defined in the Exchange's rulebook. The Exchange notes that the term ''associated person'' as defined in the Exchange's rulebook[12] is substantially similar to the definition in Nasdaq General 1(b)(2). Relatedly, the term ''Proprietary Trading Firm'' as defined in Nasdaq Rule 1011(o) is substantially similar with the definition of ''proprietary trading'' as defined in the

[7] The Exchange notes that it will not relocate or carve-out this duplicative provision concerning The Options Clearing Corporation (''OCC''). Pursuant to the Exchange's Options 9, Section 2 (''Adherence to Law''), Members are required to abide by the Act, the Exchange's by-laws, the rules of the Exchange, and OCC rules.

[8] *See supra* note 5.

[9] *See* Securities Exchange Act Release No. 34–42455 (February 24, 2000), 65 FR 11401 (March 2, 2000) (Order Granting Registration as a National Securities Exchange).

[10] *See* Securities Exchange Act Release No. 34–45803 (April 23, 2002), 67 FR 21306 (April 30, 2002) (Order Approving Proposed Rule Change and Amendment No. 1 thereto by the International Securities Exchange LLC To Restructure From a Limited Liability Company to a Corporation).

[11] ISE Options 10 is incorporated by reference into MRX Options 10. *See* Securities Exchange Act Release No. 86424 (July 12, 2019), 84 FR 36134 (July 26, 2019) (SR–MRX–2019–15).

[12] Exchange General 1, Section 1(a)(1).

Exchange's rulebook.[13] The Exchange proposes to adopt by incorporation the text of Nasdaq Rule 1011 in its entirety. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Rule 1012

Nasdaq Rule 1012 (''General Application Provisions'') provides a detailed outline of the requirements that an Applicant must follow in order to file an application for membership with Nasdaq. In contrast, the Exchange membership rules contain vague provisions describing the manner in which an application shall be submitted or how service shall be performed. The Exchange believes that Nasdaq Rule 1012 provides a more detailed set of instructions for Applicants, Members, and Associated Persons to submit materials and the requirements for service of documents. The Exchange believes that incorporating Rule 1012 by reference will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Nasdaq Rule 1012(a) provides that Applicants and Nasdaq Members may submit an application or other documents and information to Nasdaq by first-class mail, overnight courier, hand delivery, or by electronic means; this section also provides that Nasdaq shall serve a notice or decision issued under the Nasdaq Membership Rules by first-class mail or electronic means on the Applicant or Member or its counsel, unless a Nasdaq rule specifies a different method of service; finally, this section also details when service by Nasdaq or an Applicant shall be deemed complete. The Exchange membership rules contain no such provision. The Exchange believes that incorporating Nasdaq 1012(a) by reference improves its membership application process by adopting specific provisions regarding the manner of submission and service of documents.

Nasdaq Rule 1012(b) provides a definition of the term ''calendar days'' and describes the manner in which times under the Nasdaq Membership Rule shall be computed. The Exchange membership rules contain no such provision. The Exchange believes that adopting this rule by incorporation will provide further clarity to the calculation of times under its membership rules.

Nasdaq Rule 1012(c) describes a(n) Applicant's, Member's, and Associated Person's duty to ensure that the information they provide to Nasdaq at the time of the filing is accurate, complete, and current. Moreover, this provision requires that Applicant's, Member's, and Associated Person's shall ensure that membership applications and supporting materials filed with Nasdaq remain accurate, complete, and current at all times by filing supplementary amendments, which must be filed within 15 business days of their learning of the facts or circumstances giving rise to the need for an amendment. Furthermore, this section requires that Applicants, Members, and Associated Persons promptly notify Nasdaq, in writing, of any material adverse change in their financial condition. The Exchange membership rules contain no such provision. The Exchange believes that incorporating Nasdaq 1012(c) by reference improves its membership rules by adopting provisions concerning a Member's duty to ensure the accuracy, completeness, and current nature of membership information.

Exchange General 3, Section 4(b) states that every Member shall report to the Exchange all contact information required by the Exchange via the FINRA Contact System. Section 4(b) also requires Exchange Members to update their contact information promptly when necessary, but in no event later than 30 days following any change, and within 17 business days after the end of each calendar year; furthermore, it requires members to comply with any request for such information by the Exchange within 15 days or any longer period agreed upon with Exchange staff. The Exchange proposes the relocation of this provision, with minor lettering changes, to Exchange General 2 title (''Organization and Administration'') under new Section 11, entitled Contact Information Requirements. Exchange General 3, Section 4(b) is substantially similar to the rule text in both Nasdaq's and BX's General 2, Section 11 and identical to the similarly numbered rule in the ISE rulebook.

As previously stated, the Exchange proposes to adopt by incorporation the text of Nasdaq Rule 1012 in its entirety, as the rule's provisions provide clear instructions concerning the submission of membership applications and other materials; the requirements for service of documents; and the Applicants', Members', and Associated Persons' duty to ensure that the information filed with the Exchange is up to date.

Rule 1013

Nasdaq Rule 1013 sets forth the procedure for filing applications for new membership on the Exchange. The Exchange proposes to incorporate Nasdaq Rule 1013 by reference under its General 3 title. The Exchange is adopting Nasdaq Rule 1013 as it expands upon and provides clarity to the procedure in the Exchange's General 3, Section 5. The Exchange believes that incorporating Rule 1013 by reference will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Nasdaq Rule 1013(a) describes in detail the membership application process. Subsection (a)(1) (''Where to File; Contents''), provides that an application shall include (A) a copy of the Applicant's current Form BD, if not otherwise available to Nasdaq electronically through the Central Registration Depository (''CRD''); (B) an original Nasdaq-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f–2 and for whom a fingerprint card has not been filed with another self-regulatory organization (SRO), if such fingerprints are not otherwise available electronically to Nasdaq through CRD; (C) payment for such fee as may be required under the Rules; (D) a description of the Applicant's proposed trading activities on Nasdaq, such as the types of securities it will trade, whether it will be a market maker, or an order entry firm, and/or engage in block trading activities, and the extent to which the Applicant is conducting such activities as a member of other SROs; (E) a copy of the Applicant's most recent audited financial statements and a description of any material changes in the Applicant's financial condition since the date of the financial statements; (F) an organizational chart; (G) the intended location of the Applicant's principal place of business and all other branch offices, if any, and the names of the persons who will be in charge of each office; (H) a description of the communications and operational systems the Applicant will employ to conduct business and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures; system redundancies; disaster recovery plans; and system security; (I) a copy of any decision or order by a federal or state

[13] Exchange Options 1, Section 1(a)(40)

authority or SRO taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person; (J) a statement indicating whether the Applicant or any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any SRO, the foreign equivalent of a SRO, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act (''CEA'') or any substantially equivalent foreign statute or regulation, a futures association registered under the CEA or any substantially similar foreign statute or regulation, the Commission or any other ''appropriate regulatory agency'' (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the CRD, together with all relevant details, including any sanctions imposed; (K) a statement indicating whether any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any SRO, the foreign equivalent of an SRO, a foreign or international securities exchange, a contract market designated pursuant to the CEA or any substantially equivalent foreign statute or regulation, a futures association registered under the CEA or any substantially similar foreign statute or regulation, the Commission or any other ''appropriate regulatory agency'', the CFTC, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the CRD, together with all relevant details, including any sanctions imposed; (L) a copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with services regarding the execution or clearance and settlement of transactions effected on Nasdaq; (M) if the Applicant proposes to make markets on Nasdaq, a description of the source and amount of Applicant's capital to support its market making activities on Nasdaq, and the source of any additional capital that may become necessary; (N) a description of the financial controls to be employed by the Applicant with respect to anti-money laundering compliance rules as set forth in General 9, Section 37; (O) a copy of the Applicant's written supervisory procedures with respect to the activities identified in paragraph (a)(1)(D); (P) a list of the persons conducting the Applicant's market making and other trading activities, and a list of the persons responsible for such persons' supervision, together with the CRD numbers; (R) a copy of the Applicant's most recent ''FOCUS Report'' (Form X–17A–5) filed with the SEC pursuant to SEC Rule 17a–5; (S) all examination reports and corresponding responses regarding the Applicant for the previous two years from the SROs of which it is a member; (T) a copy of Nasdaq's Membership Agreement, duly executed by the Applicant, which includes, among other things: (1) An agreement to comply with the federal securities laws, the rules and regulations thereunder, Nasdaq rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under Nasdaq rules; (2) an agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to Nasdaq rules; and (U) such other reasonable information with respect to the Applicant as Nasdaq may require.

In contrast, current General 3, Section 2(a) states simply that to become a Member of the Exchange an Applicant must seek approval in the form and manner prescribed by the Exchange. Relatedly, General 3, Section 4(a) provides a short list of documents that Applicants and Members may submit with their application for membership with the Exchange. Section 4(a) states that Members and Applicants shall file with (and be subject to review by) the Exchange, at a minimum, their partnership agreements and any subsequent amendments, in the case of partnerships; articles of incorporation, by-laws and their amendments, in the case of corporations; the articles of organization and operating agreements and their respective amendments, in the case of limited liability companies. The paragraph further provides that no action or failure by the Exchange to act shall be construed to mean that the Exchange has in any way passed on the investment merits of or approved the submitted document. The Exchange believes that deleting General 3, Section 4(a) is appropriate because the Exchange's current rule is ambiguous while Nasdaq Rule 1013(a)(1), which will be incorporated by reference, lists in detail all of the supplementary application materials required for submission by an Applicant. Incorporating this provision by reference will further standardize the Exchange's membership application process.

The Exchange's General 3, Section 5(a) provides that ISE and GEMX members in good standing are eligible for Exchange membership in the same category of membership previously approved for on ISE or GEMX. General 3, Section 5(b) states that applicants for Exchange membership who are not already ISE or GEMX approved members must submit an application to the Exchange in accordance with Exchange procedures. The Exchange is proposing to delete General 3, Section 5(a) and (b) and to incorporate by reference Nasdaq Rule 1013(b)(1) and (2), Special Application Procedures, which outlines the criteria for a waive-in application when seeking membership with the Exchange, as further discussed below.

The Exchange proposes to delete the language in General 3, Section 5(b) which provides non-ISE members with at least sixty (60) days advance written notice of the date upon which the Exchange shall allocate options classes and appoint market makers pursuant to Exchange Rule 802 in order to ensure non-ISE Members have a reasonable opportunity to participate in those processes.[14] The allocation process currently governed by Exchange Options 2, Section 3 requires a member to be an approved market maker in order to be appointed as such in options classes. The Exchange has aligned its options allocations process with those of its Affiliated Exchanges and, therefore, proposes to delete the aforementioned text as it no longer applies to applicants for Membership.

Exchange General 3, Section 5(b)(i) provides that to become a Member of the Exchange an Applicant shall file an application, which must be accompanied by a nonrefundable application fee. The Exchange proposes to delete Section 5(b)(i) because the provisions in this section are already included in Nasdaq Rule 1013, New Member Application which is being incorporated by reference.

The Exchange also believes that the provision under General 3, Section 5(b)(iii) that indicates that an applicant must be approved by the Exchange to perform in at least one of the recognized capacities of a Member as stated in General 3, Section 1(c) (discussed above when describing the incorporation by reference of Nasdaq Rule 1002) is substantially similar to the language contained in Nasdaq Rule 1013(a)(1)(D).

[14] The Exchange notes that General 3, Section 5(b) contains a cross-reference to former MRX Rule 802. In 2019, Rule 802 was relocated under Options 2, Section 3 of the MRX Rulebook. *See* Securities Exchange Act Release No. 34–86424 (July 12, 2019), 84 FR 36134 (July 26, 2019) (SR–MRX–2019–15).

Nasdaq Rule 1013(a)(2) provides that the Membership Department will deem an application to be filed on the date when it is substantially complete, meaning the date on which the Membership Department receives from the Applicant all material documentation and information required under Rule 1013. This rule also provides that Nasdaq will notify the Applicant in writing when it deems the Applicant's application to be substantially complete. The Exchange's General 3, Section 5(b)(iv) contains a parallel, although brief, provision when describing the completion of the application process (''Upon completion of the application process, the Exchange shall consider whether to approve the application, unless there is just cause for delay'').

Nasdaq Rule 1013(a)(3) provides the procedure concerning incomplete applications (including the conditions necessary for the refund of application fees); and the request for additional documents or supporting information. Specifically, Nasdaq Rule 1013(a)(3)(A) (''Lapse of Applications that are not Substantially Complete'') provides that if an application that was initiated under 1013 is not deemed to be substantially complete by the Membership Department within 90 calendar days after an Applicant initiates it, then absent a showing of good cause by the Applicant, the Membership Department may, at its discretion, deem the application to have lapsed without filing, and the Membership Department will take no action in furtherance of the application. If the Membership Department deems an application to have lapsed, then the Membership Department shall serve a written notice of that determination on the Applicant. If an Applicant still wishes to apply for membership on Nasdaq after receiving notice of a lapse in its application, then the Applicant will be required to submit a new application pursuant to Nasdaq Membership Rules and pay a new application fee for doing so, if applicable. The Membership Department will refund fees that an Applicant has paid to the Nasdaq in connection with a lapsed application, in accordance with Nasdaq rules regarding fees, provided that the Nasdaq has not proceeded to process the application at the time it lapses. The rule also provides that, for purposes of Rule 1013(a)(3)(A), the Membership Department will deem an application to be not ''substantially complete'' if the Applicant fails to submit to the Membership Department materially important information or documentation that is required or requested under these Rules.

Nasdaq Rule 1013(a)(3)(B) (''Rejection of Filed Applications that Remain or Become Incomplete After Filing'') provides that if an application that was initiated under Rule 1013 is substantially complete and thus is deemed to be filed with Nasdaq under Rule 1013(a)(2), but the application nevertheless remains or becomes incomplete with respect to any required or requested information or documentation, then the Membership Department shall serve written notice to the Applicant of such incompleteness and describe the missing information or documentation. If the Applicant fails to submit to Nasdaq the missing information or documentation within a reasonable period after it receives a notice of incompleteness, then absent a showing of good cause by the Applicant, the Membership Department may, at its discretion, reject the application. If the Membership Department rejects an application on the basis of incompleteness, then the Membership Department shall serve a written notice on the Applicant of the Membership Department's determination and the reasons therefor. Nasdaq shall not refund the application fees that an Applicant has paid to Nasdaq in connection with an application that Nasdaq rejects. If the Applicant determines to continue to seek membership on Nasdaq, then the Applicant shall submit a new application and pay a new application fee in accordance with Nasdaq rules.

The Exchange clurrently contains a provision related to the lapsing of membership applications. Pursuant to General 3, Section 5(b)(vi), if the membership application process is not completed within six (6) months of the filing of the application form and payment of the appropriate fee, the application shall be deemed to be automatically withdrawn. The Exchange plans to replace General 3, Section 5(b)(vi) by incorporating by reference Rule 1013(a)(3) which provides well-defined processes for the treatment of applications that become stale or result in the Applicant's failure to pursue membership by not responding to requests for additional information.

Nasdaq Rule 1013(a)(4) (''Requests by the Department for Additional Documents or Information from the Applicant or from Third Parties'') establishes that (A) at any time before the Membership Department serves its decision as to an application for new membership in Nasdaq, the Membership Department may serve a written request for additional information or documentation, from the Applicant or from a third party, if the Membership Department deems such information or documentation to be necessary to clarify, verify, or supplement the application materials. The Membership Department may, at its discretion, request that the Applicant or the third party provide the requested information or documentation in writing or through an in-person or telephonic interview. In the written request, the Membership Department shall afford the Applicant or the third party a reasonable period of time within which to respond to the request; moreover, (B) in the event that the Membership Department obtains information or documentation about an Applicant from a third party that the Membership Department reasonably believes could adversely impact its decision on an application, then the Membership Department shall promptly inform the Applicant in writing and provide the Applicant with a description of the information or a copy of the documentation that the Membership Department obtained, where appropriate under the circumstances. Prior to rendering an application decision on the basis of information or documentation obtained from a third party source, the Membership Department shall afford the Applicant with a reasonable opportunity to discuss or to otherwise address the information or documentation that the Membership Department obtained from the third party.

The provisions under the Nasdaq Rule 1013(a)(4) are similar to the Exchange's General 3, Section 4(a), to the extent that they describe the Exchange's authority to request additional documents or information from the Applicant or Member. Relatedly, General 3, Section (d) also provides the Exchange with authority to request Associated Persons to provide additional information or testimony. The Exchange believes that incorporating by reference Nasdaq Rule 1013(a)(4) into its membership rules will provide a greater degree of detail concerning the Exchange's discretion and authority to request additional information.

Nasdaq Rule 1013(b)(1) sets forth the procedure that allows an Applicant who is a FINRA member to ''waive-in'' to become an Exchange Member and to register with the Exchange all persons associated with it whose registrations FINRA has approved (in categories recognized by the Exchange's rules). This section defines the term ''waive-in'' to mean that the Membership Department will rely substantially upon

FINRA's prior determination to approve the Applicant for FINRA membership when the Membership Department evaluates the Applicant for Exchange membership. That is, the Membership Department will normally permit a FINRA member to waive-into Exchange membership without conducting an independent examination of the Applicant's qualifications for membership on the Exchange, provided that the Membership Department is not otherwise aware of any basis set forth in Nasdaq Rule 1014 to deny or condition approval of the application.

The second special application process, which is set forth in Nasdaq 1013(b)(2), permits Applicants for Nasdaq membership that are already approved members of one or more of the affiliated exchanges to waive-into Nasdaq. In this context, ''waive-in'' means that the Membership Department will rely substantially upon an affiliated exchange's prior determination to approve the Applicant for Nasdaq membership. The procedures in Nasdaq Rule 1013(b)(2) for an Applicant to submit a waive-in application under this provision and for the Membership Department to issue a decision based upon such an application are identical to the procedures described above for FINRA members that seek to waive-into Nasdaq membership. Applicants who meet the criteria for this waive-in review process have already demonstrated their ability to meet membership standards on one or more of the affiliated exchanges which eliminates the need for a full review.

Nasdaq Rule 1013(b) (''Special Application Procedures'') was adopted by Nasdaq to expedite the membership application process of Applicants who were already members of FINRA or members of one of the affiliated exchanges. The Special Application Procedures also include updated provisions requiring compliance with Nasdaq's anti-money laundering rules.[15] The Exchange proposes to adopt by incorporation these same provisions to facilitate Applicants who meet the rule requirements. The adoption of this rule will offer members of FINRA, Nasdaq, BX, and ISE the option to apply for membership on the Exchange through an expedited membership application process.

Current Exchange rules do not allow this expedited process. However, today, this concept does exist in both the Exchange's and GEMX General 3, Section 5. Both the Exchange and GEMX rules afford an Exchange member in good standing the ability to become an Exchange or GEMX member of the same category without application. The Exchange believes that incorporating by reference Nasdaq's waive-in provisions will further the Exchange's objective to provide uniformity and clarity to its rules by aligning its membership application process with the Nasdaq, BX, and ISE exchanges. The current Exchange rule limits waive-in treatment to ISE members in good standing. Incorporating the substantially similar Nasdaq rule extends this same treatment equally across the Affiliated Exchanges by allowing waive-in treatment on the Exchange for not only ISE members but also for members of FINRA, Nasdaq, BX, and Phlx.[16]

The Exchange also proposes to delete current General 3, Section 5(d), as its placement under the membership rules is unnecessary. Exchange General 3, Section 5(d) contains declarative statements concerning the payments of fees and charges that Members are currently required to pay pursuant to the Exchange's General 2, Section 2 rule (''Fees, Dues and Other Charges'') and the Options 7 title (''Pricing Schedule'').

Similarly, the Exchange proposes to delete current General 3, Section 5(e). This rule provides that Exchange Members shall be subject to the regulatory jurisdiction of the Exchange under the Exchange Act and the Exchange rules, including without limitation the Exchange's disciplinary jurisdiction under General 5, Section 1. This provision is duplicative as it is substantially similar to existing Exchange General 5, Section 1 (''Disciplinary Jurisdiction'').

Rule 1014

Nasdaq Rule 1014 (''Department Decision'') describes the Membership Department's process for the issuance of a decision. The Exchange proposes to incorporate by reference Nasdaq Rule 1014 in its entirety as it provides a more organized, detailed, and logical description of the procedure currently described in General 3, Section 2 (in addition to the grounds for approval or disapproval referenced in General 3, Section 5(b)(iv) and (b)(v)). Incorporating Nasdaq Rule 1014 by reference in the Exchange's rules will improve the membership application and decision making process by better defining the Membership Department's authority and obligations, describing the basis for approval, conditional approval or denial of an application. Further, the Exchange believes that this proposed change provides consistency in the treatment of Exchange Applicants. Nasdaq Rule 1014(a) describes the Membership Department's authority to act on an application by approving it, denying it, or approving it subject to restrictions: (1) That are reasonably designed to address a specific (financial, operational, supervisory, disciplinary, investor protection, or other regulatory) concern; or (2) that mirror a restriction placed upon the Applicant by FINRA or an affiliated exchange.

Nasdaq Rule 1014(b), entitled ''Bases for Approval, Conditional Approval, or Denial,'' provides that the Membership Department will approve, grant conditional approval, or deny a membership application filed under Nasdaq Rules 1013 and 1017 by an Applicant that is not, and is not required to become, a FINRA member. Nasdaq Rule 1014(b)(1) indicates that the Membership Department may deny or condition membership approval for the same reasons that the Commission may deny or revoke a broker or dealer's registration; this Nasdaq Rule parallels existing General 3, Section 2(b), which describes the Exchange's authority to deny an application for the same reasons that the SEC may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Act.

Nasdaq Rule 1014(b)(2) enumerates the reasons for denial or conditional approval of a membership application in the cases when the Applicant (A) is unable to satisfactorily demonstrate its capacity to adhere to the Exchange and Commission rules; (B) has previously violated, and there is a reasonable likelihood that such Applicant will again engage in violative acts or practices, of any Exchange or Commission policies, rules, and regulations; (C) has engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood that such Applicant will again engage in violative acts or practices, of any Exchange or Commission policies, rules, and regulations; (D) is not in compliance with the Commission's net capital rule or has financial difficulties greater than 5% of their net worth; (E) has been itself, or is the successor to an entity subject to a bankruptcy, proceeding, receivership, or arrangement for the benefit of creditors within the past 3 years; (F) has engaged in an established pattern of failure to pay just debts; (G) does not hold required licenses or registrations; or (H) is unable to

[15] *See* Securities Exchange Act Release No. 34–85513 (April 4, 2019), 84 FR 14429 (April 10, 2019) (SR–NASDAQ–2019–022).

[16] Currently Exchange members cannot waive-in to Phlx. Phlx will submit a separate proposal to amend its membership application rules to extend reciprocal waive-in treatment for Exchange members.

satisfactorily demonstrate reasonably adequate systems capacity and capability.

The Exchange notes that the basis for denial listed under its General 3, Section 2(c)(1), regarding an Applicant who has a negative net worth, has financial difficulties involving an amount that is more than five percent (5%) of the applicant's net worth, or has a pattern of failure to pay just debts (whether or not such debts have been the subject of a bankruptcy action), is parallel to Nasdaq Rule 1014(b)(2)(D). Similarly, the Exchange's basis for denial under General 3, Section 2(c)(2), regarding an Applicant unable satisfactorily to demonstrate a capacity to adhere to all applicable Exchange, SEC, the Clearing Corporation and Federal Reserve Board policies, rules and regulations, including those concerning record-keeping, reporting, finance and trading procedures, is parallel to Nasdaq Rule 1014(b)(2)(A). Finally, the provision under General 3, Section 2(c)(3), regarding an Applicant unable satisfactorily to demonstrate reasonably adequate systems capability and capacity, is parallel to Nasdaq Rule 1014(b)(2)(H).

Furthermore, the Exchange believes that the provisions under Nasdaq Rule 1014(b)(2)(A), (B), and (C), which describe the basis for a decision regarding the Applicant's inability to satisfy the Exchange and securities rules, previous violative conduct, and past or potential conduct inconsistent with just and equitable principles of trade, provide the Exchange with greater authority than the one described under General 3, Section 2(d), which provides that when an Applicant is a subject of an investigation conducted by any SRO or government agency involving its fitness for becoming a Member, the Exchange need not act on the application until the matter has been resolved.

The Exchange notes that current General 3, Section 2(e) and (f), which refer to the basis for membership denial as it relates to statutory disqualification, are substantially similar to Nasdaq Rule 1002(b)(1) and (2), which describe an Applicant's ineligibility of certain persons for membership or association due to statutory disqualification. As stated above, the Exchange proposes to incorporate Nasdaq Rule 1002 in its entirety.

Nasdaq Rule 1014(b)(3) provides that the Membership Department will not approve an Applicant unless the Applicant is a member of another registered securities exchange or association that is not registered solely under Section 6(g) or Section 15A(k) of the Act. This rule also provides that an Applicant that will transact business with the public must be a member of FINRA. This requirement exists in the Exchange's rulebook in Options 10, Section 1 (''Exchange Approval''); however, to maintain harmonization of the rules, the Exchange proposes to incorporate by reference this same parallel rule. There are no proposed changes to rule text found in Exchange Options 10, Section 1 at this time.

The Exchange proposes to incorporate by reference Nasdaq Rule 1014(c) to establish the time and content of a decision and the recourse available to an Applicant if the Membership Department fails to timely issue a decision on a membership application. Current Exchange General 3, Section 5(b)(iv)), broadly prescribes that the Exchange will consider approval of the membership application, ''unless there is just cause for delay.'' Nasdaq Rule 1014(c) outlines this process in greater detail. The Nasdaq rule requires the Membership Department to serve a decision on the membership application within a reasonable time period, not to exceed 45 (calendar) days after the Applicant files and provides to the Exchange all required and requested information or documents in connection with the application. Additionally, the rule allows the Membership Department and the Applicant the ability to agree to further extensions of the decision deadlines. Nasdaq Rule 1014(c) also provides that the decision will detail the reason(s) for the denial of membership or the approval of the application subject to restrictions. This provision is similar to General 3, Section 5(b)(v), which currently establishes that the Exchange will inform the Applicant of the grounds for disapproval of a membership application. Moreover, if the Membership Department fails to timely issue a decision, the rule prescribes that the Applicant may request the Exchange Board to direct the Membership Department to issue a decision. The rule further provides that the Exchange Board, within seven days, will direct the Membership Department to serve its decision or to show good cause for a time extension. If the Membership Department shows good cause, the Exchange Board may grant the Membership Department up to 45 days to issue the decision.

Nasdaq Rule 1014(e) prescribes that service of the Membership Department's decision shall be made pursuant to Nasdaq Rule 1012. Further, the rule provides that the decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under Rule 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission. Current Exchange General 3, Section 5(b)(v) prescribes that a notice of the Exchange's decision shall be provided to the Applicant but does not specify the manner of such notification. In addition, Exchange General 3, Section 5(b)(vii) indicates that once an Applicant's membership becomes effective, the Exchange will promptly notify the Applicant of such decision. The Exchange believes that incorporating this rule by reference clarifies the process for serving the Membership Department's decision on applications.

Nasdaq Rules 1014(f) and (g), respectively, provide for the effectiveness of restrictions on an approved application and what constitutes final action in the Membership Department's decision. Rule 1014(f) establishes that a restriction imposed under Rule 1014 shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless (1) it is removed or modified by a decision constituting final action of the Exchange issued under Nasdaq Rules 1015, 1016, or 1017; or (2) stayed by the Exchange Review Council, the Exchange Board, or the Commission. Rule 1014(g) provides that unless the Applicant files a written request for a review under Rule 1015, the Membership Department's decision shall constitute final action by Nasdaq.

Rule 1015

The Exchange proposes to incorporate by reference Nasdaq Rule 1015 in its entirety under its General 3 title. Nasdaq Rule 1015, subsections (a) through (j) are substantially similar to the current provisions concerning a review by the Exchange Review Council detailed in Exchange General 3, Section 2(g).[17]

Current Exchange General 3, Section 2(g) (formerly Exchange Rule 302(g)) was amended in 2019[18] to base the Exchange's procedures on those set forth in Nasdaq and BX Rules 1015 and

[17] The Exchange notes that, recently, Nasdaq adopted Rule 1015(f)(5) which provides for the Exchange Review Council to conduct its hearings via video conferencing. *See* Securities Exchange Act Release No. 34–90390 (November 10, 2020), 85 FR 73302 (November 17, 2020) (SR–NASDAQ–2020–076). The Exchange has adopted an identical provision under General 3, Section 2(g)(6)(E). *See* Securities Exchange Act Release No. 34–90757 (December 21, 2020), 85 FR 85771 (December 29, 2020) (SR–MRX–2020–23).

[18] *See* Securities Exchange Act Release No. 34–86424 (July 12, 2019), 84 FR 36134 (July 26, 2019) (SR–MRX–2019–15).

1016 (which were identical to Nasdaq's and now incorporate by reference the Nasdaq Membership rules [19]). The Exchange believes that incorporating by reference Nasdaq Rule 1015 it will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

The Exchange proposes also to incorporate by reference Nasdaq Rule 1015(k) and (l) (respectively, ''Ex Parte Communications'' and ''Recusal or Disqualification''). Both paragraphs (k) and (l) were, respectively, previously located under Nasdaq Rule 1012(c) and (d) but were moved to their current location in the Nasdaq rulebook as the two provisions logically fit within the section of the membership rules that govern appeals of membership decisions.[20] Nasdaq Rule 1015(k) prohibits *ex parte* communications involving membership decisions subject to review among certain Exchange staff, members of the Exchange Review Council, members of a Subcommittee of the Council, and the Board of Directors. Nasdaq Rule 1015(l) governs the recusal and disqualification of a member of the Exchange Review Council, a Subcommittee thereof, or the Board of Directors from participating in a review of a membership decision. The Exchange has no parallel provisions in its rulebook to Nasdaq Rule 1015(k) and (l). The Exchange believes that incorporating Rule 1015(k) and (l) by reference enhances the Exchange Review Council's procedures and is in line with the Exchange's goal of harmonizing its rules with those of the Nasdaq, BX, and ISE exchanges.

Rule 1016

Aside from their respective internal cross-references, the text in Nasdaq Rule 1016 and Exchange General 3, Section 2(h) (both entitled ''Discretionary Review by the Exchange Board'') are identical. The Exchange proposes to incorporate by reference Nasdaq Rule 1016 under its General 3 title. The Exchange believes that incorporating by reference this rule will further the Exchange's objective to provide uniformity and clarity to its rules by aligning them with the membership rules of the Nasdaq, BX, and ISE exchanges.

Rule 1017

Nasdaq Rule 1017, ''Application for Approval of Change in Ownership, Control, or Material Business Operations,'' has no analogue rule in the Exchange's current General 3 title. Incorporating Nasdaq Rule 1017 by reference in its entirety in the Exchange's rules will enhance the Exchange's ongoing regulatory oversight capabilities by clearly identifying events that would trigger the requirement for an approved Member to file an application with the Exchange. As stated below, Nasdaq Rule 1017 outlines in detail the circumstances that trigger the filing of an application pursuant to this rule. While the Exchange has no corresponding rule, it does have a similar process in place that it administers procedurally. For example, if an existing Electronic Access Member of the Exchange is seeking market maker status for the first time, the current Exchange process is to require that the Member submit an amended Exchange application along with relevant supplementary material. The Exchange believes that incorporating Nasdaq Rule 1017 by reference and harmonizing its process with that of Nasdaq, BX, and ISE will improve its current practice by further streamlining its current practices. As stated previously, the objective is to eventually harmonize membership rules across all Affiliated Exchanges in order to advance uniformity within the membership rules and procedures.

Nasdaq Rule 1017(a) prescribes the events that require Members to file applications with the Exchange. Paragraph (a) provides that a Member shall file an application for approval prior to effecting the following changes: (1) A merger of the Member with another Member; (2) a direct or indirect acquisition by the Member of another Member; (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the Member's assets or any asset, business line or line of operations that generates revenues comprising 25% or more in the aggregate of the Member's earnings measured on a rolling 36 month basis; (4) a change in the equity ownership or partnership capital of the Member that results in one person or entity directly or indirectly owning or controlling 25% or more of the equity or partnership capital; or (5) a material change in business operations, which consist of (A) removing or modifying a membership restriction; (B) acting as a dealer or a market maker for the first time; (C) adding business activities that require a higher minimum net capital under SEC Rule 15c3–1; or (D) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in the Rule 1000 Series.

Nasdaq Rule 1017(b), governs the filing and content of applications filed under Nasdaq Rule 1017. This Rule provides that the application should be filed with the Membership Department; if the Applicant seeks approval of change of ownership or control or a material change in the Member's business operations, the application should (A) provide a detailed description of the proposed change, (B) provide a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the proposed change; and (C) if the application requests approval of a change in ownership or control, the application also shall include the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member.

Furthermore, Nasdaq Rule 1017(b) provides that if the application requests the removal or modification of a membership restriction, the application also shall, (A) present facts showing that the circumstances that gave rise to the restriction have changed; and (B) state with specificity why the restriction should be modified or removed in light of the applicable bases for denial or standards for approval set forth in Nasdaq Rules 1014 or 1017 and the articulated rationale for the imposition of the restriction. Moreover, the Rule indicates that if the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.

Nasdaq Rule 1017(c) indicates when an application shall or may be filed. Specifically, the Rule provides that (1) an application for approval of a change in ownership or control shall be filed at least 30 days prior to such change; (2) that an application to remove or modify a membership restriction may be filed at any time (clarifying that an existing restriction shall remain in effect during the pendency of the proceeding); and that (3) an application for approval of a material change in business operations, other than the modification or removal of a restriction, may be filed at any time, but the Member may not effect such change until the conclusion of the proceeding, unless the Membership Department and the Member otherwise agree.

Nasdaq Rule 1017(d) prescribes that an application will be deemed to be filed on the date when it is substantially complete, meaning the date on which the Membership Department receives

[19] *See supra* note 4.

[20] *See supra* note 15.

from the Applicant all material documentation and information required under this Rule, and that the Membership Department will notify the Applicant in writing when the Membership Department deems the Applicant's application to be substantially complete.

Nasdaq Rule 1017(e) indicates that, pursuant to Nasdaq Rule 1013(a)(3), the Membership Department may treat an application filed under this Rule as having lapsed or it may reject such an application, except that the Membership Department may treat an application as having lapsed if it is not substantially complete for 30 days or more after the Applicant initiates it.

Nasdaq Rule 1017(f) provides that the Membership Department, at any time before it serves its decision, may request additional information or documentation from the Applicant or from a third party in accordance with Nasdaq Rule 1013(a)(4).

Nasdaq Rule 1017(g) establishes that a Membership Department's decision shall be issued in accordance with Nasdaq Rule 1014, except that (1) In rendering a decision on an application submitted under the Rule that requests the modification or removal of a membership restriction, the Membership Department shall consider whether maintenance of the restriction is appropriate in light of: (A) The applicable bases for denial or standards for approval set forth in Nasdaq Rule 1014; (B) the circumstances that gave rise to the imposition of the restriction; (C) the Applicant's operations since the restriction was imposed; (D) any change in ownership or control or supervisors and principals; and (E) any new evidence submitted in connection with the application. Furthermore, this Rule provides that the Membership Department shall serve a written decision on an application filed under this Rule in accordance with Nasdaq Rule 1013(c). Moreover, the Rule provides that in the event that a proposed change in ownership, control, or business operations by a Member requires such Member to become a member of FINRA, the Membership Department shall not be required to serve a written decision under this Rule until 10 business days after the Member becomes a FINRA member.

Nasdaq Rule 1017(h) provides that service of the decision on the Applicant in accordance with Nasdaq Rule 1012. Moreover, the Rule indicates that the decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under Rules 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission.

Nasdaq Rule 1017(i) indicates that an Applicant may file a written request for review of the Membership Department's decision with the Exchange Review Council pursuant to Nasdaq Rule 1015, the rule further clarifies that the procedures set forth in Nasdaq Rule 1015 shall apply to such review, and the Exchange Review Council's decision shall be subject to discretionary review by the Exchange Board pursuant to Nasdaq Rule 1016. If the Applicant does not file a request for a review, the Membership Department's decision shall constitute final action by Nasdaq.

Nasdaq Rule 1017(j) prescribes that the Membership Department shall modify or remove a restriction on its own initiative if the Membership Department determines such action is appropriate in light of the considerations set forth in paragraph (g)(1) of the Rule. The Membership Department shall notify the member in writing of the Membership Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph Rule 1017(a).

Rule 1018

Nasdaq Rule 1018, ''Resignation, Reinstatement, Termination, and Transfer of Membership,'' has no analogue rule in the Exchange's current General 3 title, with the exception of Exchange General 3, Section 5(c). The Exchange proposes to incorporate the rule by reference under its General 3 title. Nasdaq Rule 1018 outlines the process for resignation, reinstatement, termination, and transfers of memberships. Incorporating Nasdaq Rule 1018 by reference will eventually allow the Exchange to standardize the processing of these requests across all the Affiliated Exchanges.

Nasdaq Rule 1018(a) provides that membership in Nasdaq may be voluntarily terminated only by formal resignation. Resignations of Members must be filed via electronic process or such other process as the Exchange may prescribe. Any Member may resign from Nasdaq at any time. Such resignation shall not take effect until all indebtedness due to Nasdaq from such Member shall have been paid in full and so long as any complaint or action is pending against the Member under the Rules. Nasdaq, however, may in its discretion declare a resignation effective at any time.

Nasdaq Rule 1018(b) indicates that no Member may transfer its membership or any right arising therefrom; the membership of a corporation, partnership, or any other business organization that is a Member shall terminate upon its liquidation, dissolution, or winding up; and the membership of a sole proprietorship that is a Member shall terminate at death, provided that all obligations of membership under the Rules have been fulfilled. The Exchange proposes to incorporate Nasdaq Rule 1018(b) by reference and to delete Exchange General 3, Section 5(c), which is substantially similar to this provision. Moreover, the Rule provides that the consolidation, reorganization, merger, change of name, or similar change in any corporate Member shall not terminate the membership of such corporate Member, provided that the Exchange Member or surviving corporation, if any, shall be deemed a successor to the business of the corporate Member, and the Member or the surviving organization shall continue in the securities business, and shall possess the qualifications for membership in the Exchange. Furthermore, the death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership Member shall not terminate the membership of such partnership Member, provided that the Member or surviving organization, if any, shall be deemed a successor to the business of the partnership Member, and the Member or surviving organization shall possess the qualifications for membership in the Exchange. If the business of any predecessor Member is to be carried on by an organization deemed to be a successor organization by the Exchange, the membership of such predecessor Member shall be extended to the successor organization subject to the notice and application requirements of the Rules and the right of the Exchange to place restrictions on the successor organization pursuant to the Rules; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of the Exchange's Rules.

Nasdaq Rule 1018(c) establishes that any membership or registration suspended or canceled under the Rules may be reinstated by the Exchange upon such terms and conditions as are permitted under the Act and the Exchange rules; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for

membership or registration in the Exchange.

Rule 1019

Nasdaq Rule 1019 (''Application to Commission for Review'') has no analogue rule in the Exchange's current General 3 title. Nasdaq Rule 1019 allows Applicants to request the Commission to review an Exchange final action, as provided under the Nasdaq Rule 1010 Series. Incorporating Nasdaq Rule 1019 by reference standardizes the process by which an Applicant may dispute any final action of the Exchange.

Nasdaq Rule 1019 provides that a person aggrieved by a Nasdaq's final action under Nasdaq Membership Rules may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of the Exchange, unless the Commission otherwise orders.

Revised Membership Application

As part of the harmonization of its membership rules and procedures with those of Nasdaq, BX, and ISE, the Exchange is adopting a standardized Broker-Dealer Membership Application (''Membership Application''). The Membership Application is submitted as Exhibit 3A of this proposed rule change with underlined changes concerning the MRX market. Each Exchange Membership Application will be accompanied by a ''Membership Agreement'' (submitted as Exhibit 3B of the attached), which should be signed by all applicants to membership with the Exchange.

Conclusion

The changes proposed herein will allow the Exchange to harmonize its membership rules and processes with those of Nasdaq, BX, and ISE, and ultimately, with the other Affiliated Exchanges, which will eventually provide a uniform criteria across the Affiliated Exchanges for membership qualifications and a consistent process across the Affiliated Exchanges for processing membership applications. The proposal will also provide for full membership reciprocity between Nasdaq, BX, ISE, and the Exchange—and hopefully, in time, across all of the Affiliated Exchanges—so that a member of one Affiliated Exchange would receive expedited treatment in applying for membership on any other Affiliated Exchange. Similarly, harmonized membership rules and processes will benefit Exchange Applicants and Members by establishing consistent membership requirements and processes that must be followed to apply for membership on the Exchange.

Moreover, as to the Exchange itself, the proposed changes described herein will render the Exchange's membership rules and processes clearer, better organized, simpler, and easier to comply with. Again, such changes will provide benefits both to the Exchange's Membership Department and to Exchange Applicants.

The proposed membership rules and processes are substantially similar to the existing rules and process, and where there are differences between the new and old processes, the Exchange believes that the new process does not disadvantage its Members or Associated Persons. To the contrary, the Exchange believes that the new rules and processes will benefit all parties as it again provides greater clarity, simplicity, and efficiency than the retired rules and processes.

Implementation

To facilitate an orderly transition from the existing rules under the General 3 title and the Nasdaq Membership Rules to be incorporated by reference, the Exchange is proposing to apply the existing Rules to all applications which have been submitted to the Exchange (including applications that are not yet complete) and are pending approval prior to the operative date. The Exchange also will apply the existing Rules to any appeal of an Exchange membership decision or any request for the Board to direct action on an application pending before the Exchange Review Council, the Board, or the Commission, as applicable. As a consequence of this transition process, the Exchange will retain the existing processes during the transition period until such time that there are no longer any applications or matters proceeding under the existing rules. To facilitate this transition process, the Exchange will retain a transitional rulebook that will contain the Exchange's membership rules as they are at the time that this proposal is filed with the Commission. This transitional rulebook will apply only to matters initiated prior to the operational date of the changes proposed herein and it will be posted to the Exchange's public rules website. When the transition is complete, the Exchange will remove the transitional rulebook from its public rules website.

The Exchange will announce and explain this transition process in a regulatory alert.

The Exchange notes that Nasdaq and BX applied the same process described above to govern its transition to its amended membership rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) and of the Act,[22] 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. It is also consistent with Section 6(b)(7) of the Act in that it provides for a fair procedure for denying Exchange membership to any person who seeks it, barring any person from becoming associated with an Exchange Member, and prohibiting or limiting any person with respect to access to services offered by the Exchange or a Member thereof.[23]

As a general matter, the Exchange believes that its proposal to delete its existing membership rules, incorporate by reference the Nasdaq Membership Rules, and other related changes will promote a free and open market, and will benefit investors, the public, and the markets, because the new rules will be clearer, better organized, and simpler.

The proposal is just and equitable because it will render the Exchange's membership rules easier for Applicants and Members to read and understand, including by doing the following:

- Establishing a ''roadmap'' paragraph as shown in Nasdaq Rule 1014(a) that sets forth the basic authority of the Membership Department to approve, approve with conditions, or deny applications for membership before the Rule goes on to enumerate criteria for the Membership Department to apply when taking each of those actions;
- Making the titles of the rules more accurate and descriptive (*e.g.,* Nasdaq Rule 1014(b));
- Grouping logically-related provisions together in the rules (*e.g.,* provisions governing resignation, termination, transfer, and reinstatement of membership) and recusals and disqualifications;
- Clarifying when the Membership Department will deem an application to be filed (when the application is ''substantially complete,'' as set forth in Nasdaq Rule 1013(a)(2)) and by requiring the Membership Department to notify an Applicant in writing of the filing date;
- Clarifying what the Exchange means when it states that an Applicant

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78f(b)(7).

may ''waive-in'' to Exchange membership (as set forth in Nasdaq Rule 1013(b)); and

The proposal will also make compliance with the membership rules simpler and less burdensome for Applicants and Members by, for example, doing the following:

- Eliminating obsolete requirements to submit paper copies of Forms U–4 and BD or explain information listed on the forms where the Membership Department already has electronic access to the Forms and the information contained therein;
- Permitting electronic filing of applications (Nasdaq Rule 1012(a)(1);
- Allowing payment of application fees by means other than paper check (Nasdaq Rule 1013(a)(1)(C));
- Harmonizing disparate procedures under Nasdaq Rules 1013 and 1017 for filing, evaluating, and responding to initial membership applications and applications for approval of business changes;
- Detailing the circumstances in which an Applicant may waive-into Exchange membership to include the Applicant's membership in any of the affiliated exchanges and defining procedures for processing and responding to waive-in applications (Nasdaq Rule 1013(b));

In sum, the foregoing changes will update, rationalize, and streamline the Exchange's membership rules and processes, all to the benefit of Applicants and Members. Moreover, these changes will not adversely impact the rights of Applicants or Members to appeal adverse Membership Department decisions under these Rules or to request Board action to compel the Membership Department to render decisions on applications.

Last, the Exchange believes that its proposal to phase-in the implementation of the new membership rules and processes is consistent with Section 6(b)(7) of the Act [24] because both the current and proposed processes provide fair procedures for granting and denying applications for becoming an Exchange Member, becoming an Associated Person, and making material changes to the business operations of a Member. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new applications, appeals, and requests for Board action that are initiated on or after that implementation date. Any application, appeal, or request for Board action initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will maintain a transitional rulebook on the Exchange's public rules website which will contain the Exchange Rules as they are at the time of filing this rule change. These transitional rules will apply exclusively to applications, appeals, and requests for Board action initiated prior to the implementation date. Upon conclusion of the last decision on a matter to which the transitional rules apply, the Exchange will remove the defunct transitional rules from its public rules website. Thus, the transition will be conducted in a fair, orderly, and transparent manner. Lastly, the proposed transition process is the same process that Nasdaq and BX implemented during its transition to new membership rules.

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. The Exchange does not expect that its proposed changes to the membership rules will have any competitive impact on its existing or prospective membership. The proposed changes will apply equally to all similarly situated Applicants and Members and they will confer no relative advantage or disadvantage upon any category of Exchange Applicant or Member. Moreover, the Exchange does not expect that its proposal will have an adverse impact on competition among exchanges for members; to the contrary, the Exchange hopes that by clarifying, reorganizing, and streamlining its membership rules, the Exchange's membership process will be less burdensome for Applicants and Members and the Exchange will improve its competitive standing relative to other exchanges.

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 [25] and subparagraph (f)(6) of Rule 19b–4 thereunder.[26]

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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MRX–2021–03 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–2021–03. 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 (*http://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

[24] 15 U.S.C. 78f(b)(7).

[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 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.

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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2021–03 and should be submitted on or before May 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–09023 Filed 4–29–21; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974: Revision of Privacy Act System of Records

AGENCY: Small Business Administration (SBA).

ACTION: Notice of Revision of Privacy Act Systems of Records.

SUMMARY: SBA is amending the Privacy Act Systems of Records for the Loan System, SBA 21 (''SOR 21'') to clarify that certain persons who have previously defaulted on a Federal loan or Federally-assisted financing resulting in the Federal government sustaining a loss are included in the records that SBA transfers to the Department of Housing and Urban Development for publication in a government-wide computer information system, the Credit Alert Verification Reporting System (previously referred to as the Credit Alert Interactive Voice Response System). This notice is in accordance with the Privacy Act requirement that agencies publish their amended Systems of Records in the **Federal Register** when there is a revision, change or addition to the systems.

DATES: Written comments on the revisions to the SBA's SOR 21 are due June 1, 2021. The changes to these Systems of Records are effective without further notice on June 14, 2021 unless comments are received that result in further revision. Based on SBA's review of comments received, if any, SBA will publish a notice if it determines to make changes to the system notices.

ADDRESSES: Written comments on the revisions to the SBA's SOR 21 should be directed to William Kostoff, Financial Analyst, U. S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416, *William.kostoff@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Adrienne Grierson, Deputy Director, Office of Financial Program Operations at *adrienne.grierson@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA is revising its Privacy Act Systems of Records Notice, which was previously published at 74 FR 14890 (April 1, 2009), 77 FR 15835 (March 16, 2012), and 77 FR 61467 (October 9, 2012) to amend System 21 (Loan System) to clarify that persons who have previously defaulted on an SBA loan resulting in SBA sustaining a loss are included in the records that SBA transfers to the Department of Housing and Urban Development for publication in a government-wide computer information system, the Credit Alert Verification Reporting System.

System 21—Loan System

Under SOR 21, paragraph ''o'', SBA transfers delinquent debt information to the Department of Housing and Urban Development (''HUD'') for publication in a government-wide computer information system, the Credit Alert Verification Reporting System (CAIVRS), previously referred to as the Credit Alert Interactive Voice Response System. This transfer of information is authorized pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and other applicable law. As a shared database of defaulted Federal debtors, CAIVRS provides the participating Federal agencies and their authorized financial institutions with a means to prescreen applicants for Federal financial assistance to avoid extending such assistance to persons who are credit risks, *e.g.,* persons who have delinquent Federal debt or have had claims paid on direct or guaranteed Federal loans.

Consistent with the purposes of CAIVRS, SBA currently includes in CAIVRS the names of persons (including businesses and guarantors) who have previously defaulted on an SBA loan, resulting in SBA sustaining a loss in any of its programs. These persons who have caused a prior loss to SBA are ineligible for further SBA business loans under 13 CFR 120.110(q), and their listing in CAIVRS assists SBA and its authorized lenders in ensuring that they do not obtain further SBA financial assistance. For clarity, SBA is amending the routine use provisions of its Privacy Act Systems of Records, Loan System, SBA 21 (''SOR 21''), paragraph ''o'', to indicate that persons who have caused a prior loss under 13 CFR 120.110(q) are included in this routine use.

SYSTEM NAME:

Loan System—SBA 21.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used, disclosed, or referred:

''o—To the Department of Housing and Urban Development or other Federal agency for publication of delinquent debt information of persons (including the names of businesses and individuals) delinquent in paying a debt owed to or guaranteed by the SBA (which includes persons who have caused a prior loss under 13 CFR 120.110(q)) on a system to allow searches by participating Government agencies and approved private lenders, consistent with applicable law.''

Dated: April 26, 2021.

Ji Kim,

Director, Office of Financial Program Operations, Office of Capital Access.

[FR Doc. 2021–09064 Filed 4–29–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans Interest Rate for Third Quarter FY 2021

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loans interest rate for loans approved on or after April 30, 2021.

DATES: Issued on 04/26/2021.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The Small Business Administration publishes an interest rate for Military Reservist Economic Injury Disaster Loans (13 CFR 123.512) on a quarterly basis. The

[27] 17 CFR 200.30–3(a)(12).

interest rate will be 2.880 for loans approved on or after April 30, 2021.

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–09008 Filed 4–29–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11419]

Bureau of Oceans and International Environmental and Scientific Affairs; Annual Certification of Shrimp-Harvesting Nations

ACTION: Notice of annual certification.

SUMMARY: On April 26, 2021, the Department of State declared that wild-caught shrimp harvested in the following nations, particular fisheries of certain nations, and Hong Kong are eligible to enter the United States: Argentina, Australia (Northern Prawn Fishery, the Queensland East Coast Trawl Fishery, the Spencer Gulf, and the Torres Strait Prawn Fishery), The Bahamas, Belgium, Belize, Canada, Chile, Colombia, Costa Rica, Denmark, the Dominican Republic, Ecuador, El Salvador, Fiji, France (French Guiana), Gabon, Germany, Guatemala, Guyana, Honduras, Iceland, Ireland, Jamaica, Japan (shrimp baskets in Hokkaido), Republic of Korea (mosquito nets), Malaysia (Kelantan, Terengganu, Pahang, and Johor), the Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Oman, Panama, Peru, Russia, Spain (Mediterranean red shrimp), Sri Lanka, Suriname, Sweden, the United Kingdom, and Uruguay. For nations, economies, and fisheries not listed above, only shrimp harvested from aquaculture is eligible to enter the United States. All shrimp imports into the United States must be accompanied by the DS–2031 Shrimp Exporter's/Importer's Declaration.

DATES: This certification is effective on 4/30/2021.

FOR FURTHER INFORMATION CONTACT: Joseph Fette, Section 609 Program Manager, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, 2201 C Street NW, Washington, DC 20520–2758; telephone: (202) 647–2335; email: *DS2031@state.gov.*

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 (''Sec. 609'') prohibits imports of wild-caught shrimp or products from shrimp harvested with commercial fishing technology unless the President certifies to the Congress by May 1, 1991, and annually thereafter, that either: (1) The harvesting nation has adopted a regulatory program governing the incidental taking of relevant species of sea turtles in the course of commercial shrimp harvesting that is comparable to that of the United States and that the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of sea turtles by United States vessels in the course of such harvesting; or (2) the particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of sea turtles in the course of shrimp harvesting. The President has delegated the authority to make this certification to the Secretary of State (''Secretary'') who further delegated the authority within the Department of State (''Department''). The Revised Guidelines for the Implementation of Sec. 609 were published in the **Federal Register** on July 8, 1999, at 64 FR 36946.

On April 26, 2021, the Department certified the following nations on the basis that their sea turtle protection programs are comparable to that of the United States: Colombia, Ecuador, El Salvador, Gabon, Guatemala, Guyana, Honduras, Nicaragua, Nigeria, Panama, and Suriname. The Department suspended the certification of Mexico because its sea turtle protection program is no longer comparable to that of the United States. The Department also certified several shrimp-harvesting nations and one economy as having fishing environments that do not pose a danger to sea turtles. The following nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible: Argentina, Belgium, Canada, Chile, Denmark, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Finland voluntarily withdrew its certification for lack of a shrimp fishery. The following nations and Hong Kong only harvest shrimp using small boats with crews of less than five that use manual rather than mechanical means to retrieve nets or catch shrimp using other methods that do not threaten sea turtles: The Bahamas, Belize, Costa Rica, the Dominican Republic, Fiji, Jamaica, Oman, Peru, and Sri Lanka. Use of such small-scale technology does not adversely affect sea turtles.

A completed DS–2031 Shrimp Exporter's/Importer's Declaration (''DS–2031'') must accompany all imports of shrimp and products from shrimp into the United States. Importers of shrimp and products from shrimp harvested in the certified nations and one economy listed above must either provide the DS–2031 form to Customs and Border Protection at the port of entry or provide the information required by the DS–2031 through the Automated Commercial Environment. DS–2031 forms accompanying all imports of shrimp and products from shrimp harvested in uncertified nations and economies must be originals with Box 7(A)(1), 7(A)(2), or 7(A)(4) checked, consistent with the form's instructions with regard to the method of harvest of the shrimp and based on any relevant prior determinations by the Department, and signed by a responsible government official of the harvesting nation. The Department did not determine that shrimp or products from shrimp harvested in a manner as described in 7(A)(3) in any uncertified nation or economy is eligible to enter the United States.

Shrimp and products of shrimp harvested with turtle excluder devices (''TEDs'') in an uncertified nation may, under specific circumstances, be eligible for importation into the United States under the DS–2031 Box 7(A)(2) provision for ''shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States.'' Use of this provision requires that the Secretary or his or her delegate determine in advance that the government of the harvesting nation has put in place adequate procedures to monitor the use of TEDs in the specific fishery in question and to ensure the accurate completion of the DS–2031 forms. At this time, the Department has determined that only shrimp and products from shrimp harvested in the Northern Prawn Fishery, the Queensland East Coast Trawl Fishery, and the Torres Strait Prawn Fishery in Australia, in the French Guiana domestic trawl fishery, and in the fisheries of Kelantan, Terengganu, Pahang, and Johor, Malaysia, are eligible for entry under this provision. The importation of TED-caught shrimp from any other uncertified nation will not be allowed. A responsible government official of Australia, France, or Malaysia must sign in Block 8 of the DS–2031 form accompanying these imports into the United States.

In addition, the Department has determined that shrimp and products from shrimp harvested in the Spencer Gulf region in Australia, with shrimp baskets in Hokkaido, Japan, with ''mosquito'' nets in the Republic of Korea, and Mediterranean red shrimp (*Aristeus antennatus*) and products from that shrimp harvested in the

Mediterranean Sea by Spain may be imported into the United States under the DS–2031 Box 7(A)(4) provision for ''shrimp harvested in a manner or under circumstances determined by the Department of State not to pose a threat of the incidental taking of sea turtles.'' A responsible government official of Australia, Japan, the Republic of Korea, or Spain must sign in Block 8 of the DS–2031 form accompanying these imports into the United States. The Department has communicated these certifications and determinations under Sec. 609 to the Trade Transformation Office at U.S. Customs and Border Protection.

David F. Hogan,

Acting Director, Office of Marine Conservation, Department of State.

[FR Doc. 2021–09077 Filed 4–29–21; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36494]

Ringneck & Western Railroad, L.L.C.—Acquisition and Operation Exemption—Railroad Line in Davison, Aurora, Brule, Lyman, Jones, Jackson, & Pennington Counties, S.D.

Ringneck & Western Railroad, L.L.C. (RWRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to (1) acquire from the State of South Dakota, acting by and through its Department of Transportation (the State) approximately 285.43 miles of rail line extending between milepost 374.57 in Mitchell, S.D., and milepost 660.0 in Rapid City, S.D. (the Line); (2) commence common carrier service over the portions of the Line extending between (a) milepost 374.57 in Mitchell, S.D., and milepost 562.53 in Kadoka, S.D., (the MK Segment) and (b) milepost 659.6 and milepost 660.0, both in Rapid City, S.D. (the Rapid City Segment); (3) acquire common carrier service reactivation rights over the currently rail-banked segments of the Line between milepost 562.53 in Kadoka, S.D., and milepost 659.6 in Rapid City, S.D.[1]; and (4) incidental to the acquisition of the Line, acquire by assignment overhead trackage rights over lines of BNSF Railway Company (BNSF) between (a) BNSF's connection with the eastern end of the MK Segment of the Line at BNSF milepost 650.65 at Mitchell, S.D., and certain yard tracks in BNSF's Mitchell Yard at BNSF milepost 650.16; and (b) BNSF's Mitchell Yard at milepost 650.16 and the Grain Shuttle Facility in Mitchell, S.D., located at milepost 652.9 (the Trackage Rights Lines).

This transaction is related to a verified notice of exemption filed concurrently in *Watco Holdings, Inc.—Continuance in Control Exemption—Ringneck & Western Railroad, L.L.C.,* Docket No. FD 36512, in which Watco Holdings, Inc., seeks to continue in control of RWRR upon RWRR's becoming a Class III rail carrier.

The verified notice states that RWRR and the State have reached an agreement pursuant to which RWRR will purchase the Line (including the right to restore common carrier service over the rail-banked segment), commence common carrier service over the MK Segment and the Rapid City Segment, and acquire by assignment overhead rights over the Trackage Rights Lines.

RWRR certifies that its projected annual revenues as a result of this transaction are expected to exceed $5 million, but they are not expected to result in RWRR becoming a Class I or Class II rail carrier. Because the projected annual revenue will exceed $5 million, RWRR certified, on March 25, 2021, that it had complied with the labor notice requirements of 49 CFR 1150.32(e)) on March 24, 2021. RWRR also certifies that the proposed acquisition and operation of the Line does not involve a provision limiting RWRR's future interchange of traffic on the Line with a third-party connecting carrier.

The earliest this transaction may be consummated is May 24, 2021, the effective date of the exemption (60 days after RWRR certified its compliance with the labor notice requirements of 49 CFR 1150.32(e)).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 16, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36494, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on RWRR's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to RWRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: April 27, 2021.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2021–09061 Filed 4–29–21; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36512]

Watco Holdings, Inc.—Continuance in Control Exemption—Ringneck & Western Railroad, L.L.C.

Watco Holdings, Inc. (Watco), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Ringneck & Western Railroad, L.L.C. (RWRR), a noncarrier controlled by Watco, upon RWRR's becoming a Class III rail carrier.

This transaction is related to a verified notice of exemption filed concurrently in *Ringneck & Western Railroad—Acquisition & Operation Exemption—Railroad Line in Davison, Aurora, Brule, Lyman, Jones, Jackson, & Pennington Counties, S.D.,* Docket No. FD 36494, in which RWRR seeks, among other things, to acquire from the State of South Dakota approximately 285.43 miles of railroad line and acquire by assignment incidental overhead trackage rights over certain lines of BNSF Railway Company in South Dakota.

The transaction may be consummated on or after May 16, 2021, the effective date of the exemption (30 days after the verified notice was filed).

According to the verified notice of exemption, Watco currently controls indirectly 39 Class III railroads and one Class II railroad, collectively operating in 27 states. For a complete list of these rail carriers and the states in which they operate, see the Appendix to Watco's April 16, 2021 verified notice of exemption. The verified notice is available at *www.stb.gov.*

Watco represents that: (1) The rail line to be operated by RWRR does not connect with the rail lines of any of the rail carriers controlled by Watco; (2) this transaction is not part of a series of anticipated transactions that would connect RWRR with any railroad in the

[1] *See Sammamish Transp. Co.—Notice of Interim Trail Use & Termination of Modified Cert.,* FD 33398 (Sub-No. 1) (STB served Feb. 26, 1998); *Mitchell-Rapid City Reg'l R.R. Auth.—Modified Rail Cert.—Between Caputa & Rapid City, S.D,* FD 35149 (STB served Apr. 28, 2009).

Watco corporate family; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves the control of one Class II and one or more Class III rail carriers, the transaction is subject to the labor protection requirements of 49 U.S.C. 11326(b) and *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad,* 2 S.T.B. 218 (1997).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 7, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36512, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, one copy of each pleading must be served on Watco's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to Watco, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: April 27, 2021.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2021–09058 Filed 4–29–21; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 804X)]

CSX Transportation, Inc.—Abandonment Exemption—in Frederick County, MD

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 0.59-mile rail line between Val Sta. 1728+23 and Val Sta. 1759+25 on its Baltimore Division, Old Main Line Subdivision, in Frederick County, Md. (the Line). The Line traverses U.S. Postal Service Zip Code 21771.

CSXT has certified that: (1) No local traffic has moved over the Line for at least two years; (2) because the Line is not a through route, there is no overhead traffic on the Line and, therefore, none needs to be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7 and 1105.8 (notice of environmental and historic report), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] the exemption will be effective on May 30, 2021, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 10, 2021.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 20, 2021.

All pleadings, referring to Docket No. AB 55 (Sub-No. 804X), should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on CSXT's representative, Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

CSXT has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by May 7, 2021. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by CSXT's filing of a notice of consummation by April 30, 2022, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: April 26, 2021.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2021–09106 Filed 4–29–21; 8:45 am]

BILLING CODE 4915–01–P

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Energy Resource Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Energy Resource Council (RERC) will hold a

virtual meeting on Tuesday, May 18, 2021, regarding regional energy related issues in the Tennessee Valley.

DATES: The meeting will be held on Tuesday, May 18, 2021, from 9:00 a.m. to 2:00 p.m. EDT.

ADDRESSES: The meeting is virtual and open to the public. Public members must preregister at the following link: *https://bit.ly/RERC-May.* Anyone needing special accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Cathy Coffey, *ccoffey@tva.gov* or 865/632–4494.

SUPPLEMENTARY INFORMATION: The RERC was established to advise TVA on its energy resource activities and the priorities among competing objectives and values. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2.

The meeting agenda includes the following:

1. Welcome and Introductions
2. Public Listening Session
3. TVA Update
4. Presentation Regarding TVA's Asset Planning
5. Presentation on Carbon Strategy
6. Innovation Initiatives
7. Council Discussion

The RERC will hear views of citizens at a 30-minute public listening session at 9:30 a.m. EDT, that day. Persons wishing to speak must register at *ccoffey@tva.gov* by 5:00 p.m. EDT, on Monday, May 17, 2021, and will be called on during the public listening session for up to two minutes to share their views. Written comments also are invited and may be mailed to the Regional Energy Resource Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 9D, Knoxville Tennessee 37902.

Dated: April 26, 2021.

The DFO of the Tennessee Valley Authority and Vice President of External Strategy & Regulatory Affairs, Melanie Farrell, having reviewed and approved this document, is delegating the authority to sign this document to Cathy Coffey, Senior Program Manager of Stakeholder Relations, for purposes of publication in the **Federal Register**.

Cathy Coffey,

Stakeholder Relations, Tennessee Valley Authority.

[FR Doc. 2021–09067 Filed 4–29–21; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2021–0004]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

DATES: Comments must be submitted before June 29, 2021.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.
2. *Fax:* 202–366–7951.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.*

Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Jacque Mason (202) 568–0656 or email: *Jacque.Mason@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

(OMB Number: 2132–0572)

Background: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Federal Transit Administration and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of

information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered is not used for the purpose of substantially informing influential policy decisions; and
- Information gathered yields qualitative information; the collections are not designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for sub mission for other generic mechanisms that are designed to yield quantitative results.

Current Action: Extension of a currently approved collection.

Respondents: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Total Annual Respondents: 10,000.

Estimated Annual Burden on Respondents: 7,582 hours.

Frequency: Once per request.

Nadine Pembleton,

Director Office of Management Planning.

[FR Doc. 2021–09040 Filed 4–29–21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0065, Notice 1]

Receipt of Petitions for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petitions.

SUMMARY: Ricon Corporation (Ricon), has determined that certain S-Series and K-Series Classic wheelchair lifts do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform Lift Systems for Motor Vehicles.* Because of Ricon's determination, Navistar, Inc., on behalf of IC Bus, LLC (Navistar), who installed the S-Series and K-Series Classic wheelchair lifts in their buses, determined that model year (MY) 2013–2019 IC buses do not comply with FMVSS No. 404, *Platform Lift Installation in Motor Vehicles.* Ricon and Navistar, collectively referred to as the ''the petitioners,'' filed the appropriate noncompliance reports and subsequently petitioned NHTSA for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of the petitioner's petitions.

DATES: The closing date for comments on the petition is June 1, 2021.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition.

Comments must refer to the docket number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered fully possible.

When the petitions are granted or denied a notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a

Federal Register notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. *Overview:* Ricon has determined that certain S-Series and K-Series Classic wheelchair lifts do not fully comply with paragraphs S6.10.2.4 of FMVSS No. 403, *Platform Lift Systems for Motor Vehicles* (49 CFR 571.403). Ricon filed a noncompliance report dated June 3, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Ricon subsequently petitioned NHTSA on June 21, 2019, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

Because of Ricon's determination, Navistar, who installed the S-Series and K-Series Classic wheelchair lifts in their buses, determined that certain model year (MY) 2013–2019 IC buses do not comply with paragraph S4.1.4 of FMVSS No. 404, *Platform Lift Installation in Motor Vehicles* (49 CFR 571.404). Navistar also filed two noncompliance reports dated June 19, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* and subsequently petitioned NHTSA on July 10, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of the petitioner's petitions is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petitions.

II. Equipment and Vehicles Involved: On June 3, 2019, Ricon submitted a noncompliance report and then on June 21, 2019, subsequently submitted a petition that reported approximately 20,862 S-Series and K-Series Classic wheelchair lifts, manufactured between October 2, 2012, and May 24, 2019, are potentially involved.

In concert with Ricon's filings, Navistar who Ricon sold lifts to and who installed the S-Series and K-Series Classic wheelchair lifts in its vehicles also filed noncompliance reports and an inconsequential noncompliance petition. Appropriately, Navistar determined that approximately 2,921 of the following IC commercial buses and school buses are potentially involved:

- MY 2013–2018 IC CE commercial buses, manufactured between May 10, 2012, and November 7, 2017.
- MY 2016 IC RE commercial buses, manufactured between November 12, 2015, and November 16, 2015.
- MY 2013–2015 IC BE school buses, manufactured between July 11, 2012, and September 17, 2014.
- MY 2013–2015 IC AE school buses, manufactured between December 10, 2012, and October 16, 2014.
- MY 2013–2019 IC CE school buses, manufactured between May 10, 2012, and May 2, 2018.
- MY 2013–2014 IC RE school buses, manufactured between August 30, 2012, and November 18, 2013.
- MY 2016–2017 IC RE school buses, manufactured between January 13, 2015, and January 22, 2016.
- MY 2019 IC RE school buses, manufactured between February 8, 2018, and February 8, 2018.

Ricon reported that 20,862 S-Series and K-Series Classic wheelchair lifts are potentially involved while Navistar the only OEM to file, reported in total, 2,921 buses with the noncompliant S-Series and K-Series Classic wheelchair lifts are potentially involved. NHTSA reached out to Ricon on multiple occasions to try to reconcile the difference in number of lifts reported versus the number of vehicles reported. In an email dated June 10, 2020, Ricon provided a table that reported that 20,862 S-Series and K-Series Classic wheelchair lifts were produced, with 6,149 going to dealers, 14,701 going to OEMs, and 12 with Ricon's parent company Wabtec Corporation (Wabtec). Below is a table that outlines the different numbers as reported by Ricon, by date, for the S-Series and K-Series Classic wheelchair lifts and the total number of vehicles as reported by the OEM.

RICON S-SERIES AND K-SERIES CLASSIC WHEELCHAIR LIFTS POTENTIALLY INVOLVED

	Ricon's 6/21/19 reporting	Ricon's 6/10/20 reporting	Total OEM 573 reporting's
Dealers	.....	6,149	.....
OEMs	.....	14,701	.....
Wabtec*	.....	12	.....
Total	20,862	20,862	2,921

* Ricon is a subsidiary of WABTEC.

The total number of vehicles reported by Ricon and the OEM has not changed and the number S-Series and K-Series Classic wheelchair lifts as reported by Ricon on June 10, 2020, are the most up-to-date numbers. Based on current numbers as shown in the table above, there are still 18,571 lifts that have not been accounted for. Despite several meetings and communication with Ricon directed to discerning the distribution and disposition of those lifts, NHTSA has not been able to obtain additional information about the lifts not sold directly to vehicle manufacturers. NHTSA also feels it is prudent to emphasize that any decision on these petitions does not relieve vehicle or equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant lifts and vehicles under their control after the petitioners notified them that the subject noncompliance existed.

III. Noncompliance: Ricon explains that its Classic S-Series and K-Series platform lifts do not comply with the inner roll stop interlock requirements of FMVSS No. 403, S6.10.2.4 and S6.10.2.7 when tested in accordance with the test procedure at S7.6.1. The subject lifts, as installed in certain commercial buses and school buses, do not comply with paragraph S4.1.4 of FMVSS No. 404.

IV. Rule Requirements: Paragraph S6.10.2.4 and paragraph S6.10.2.7 of FMVSS No. 403, include the requirements relevant to the deployment of the inner roll stop. When the platform reaches a level where the inner roll stop is designed to deploy, the platform must stop unless the inner roll stop has deployed. Verification with

this requirement is made by performing the test procedure specified in S7.6.1. When the platform stops, the vertical change in distance of the horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the inner roll stop or platform edge) must not be greater than 13 mm (0.5 in). Verification of compliance with this requirement is made using the test procedure specified in S7.6.1.

Paragraph S4.1.4 of FMVSS No. 404, includes lift-equipped buses, school buses, and MPVs other than motor homes with a GVWR greater than 4,536 kg (10,000 lb.) must be equipped with a public use lift certified as meeting FMVSS No. 403.

V. Summary of Petitions: The following views and arguments presented in this section, ''V. Summary of Petitions,'' are the views and arguments provided by the petitioners. They have not been evaluated by the Agency and do not reflect the views of the Agency. The petitioners described the subject noncompliance and stated their belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

In support of their petitions, the petitioners submitted the following arguments:

1. The Occupant Unloading Orientation in the Test Procedure Does Not Represent Real-World Use.

The petitioners state that for public use lifts, Ricon's operator instructions (and the industry standard practice) instructs that an occupant is to exit the vehicle from vehicle floor loading level facing frontwards, not backwards per the test procedure. In this orientation, the occupant is facing away from the vehicle and can view his/her surroundings on the street or parking lot. In this configuration, the inner roll stop for the Classic lifts performs as designed. When disembarking the vehicle consistent with Ricon's operator instructions, and consistent with the way occupants regularly exit the vehicle, [1] the micro switch is triggered consistently regardless of the placement of the wheelchair because there is always sufficient weight distribution from the mobility device to the micro switch. The loading and unloading direction in the test procedure is not consistent with real-world application or use and is not consistent with industry practice or the way that Ricon (or its competitors [2]) instruct that the lifts should be used. As such, in real-world operation, there is no safety risk presented.

Per the petitioners, the position of the wheelchair test device specified in the FMVSS No. 403 test procedure is inconsistent with the actual use of the lifts and therefore, in actual use, no real-world safety risk is presented. The test procedure provides that the platform should be maneuvered to vehicle floor level loading position and the wheelchair test device should be placed on the platform with only one front wheel of the wheelchair test device facing the vehicle. *See* FMVSS No. 403, S7.6.2. This instruction is contrary to the instructions provided in the Ricon operator's manual instructions and contrary to industry practice. For public use lifts, the standard industry practice is to load and unload occupants with mobility devices rearward, facing away from the vehicle and with their back to the vehicle. [3] Significantly, NHTSA's own literature is consistent with Ricon's approach and states that wheelchair occupants should be loaded and unloaded facing away from the vehicle. [4]

As written, the instructions in the test procedure are inconsistent with the industry standard and Ricon's operator's manual for public use lifts [5]. The petitioners state that the operator's manual for the private use Classic lifts describes how an occupant should board the lift and that similar instructions on passenger orientation are provided for the public use version of the Classic lifts.

The petitions also note that to complement the operating instructions, Ricon applies decals on the vertical arms of the lift to remind the lift operator and reinforce the correct means to load and unload an occupant onto the lift.

2. The Classic Lifts Incorporate Redundant Safety Features.

The petitioners contend that for public use lifts, assuming the user exited the vehicle backwards per the test procedure, if the inner roll stop began to deploy there are redundant safety features that would preclude any injury. All the Classic lifts have an outer barrier that will remain deployed (in the vertical position) until the lift reaches the ground level unloading position. Because the outer barrier remains vertical throughout the entire lift operation, there is no risk that the occupant could roll backwards and off the lift itself. In addition, on all public use lifts there is a belt retention device which acts as another redundant safety feature. The belt retention device would also restrain an occupant safely on the lift should the inner barrier begin to deploy while occupied and the handrails on the sides of the lift will prevent any tipping from the sides. The environment in which these lifts are used also diminishes any potential risk to safety. When the Classic lifts operate as a public use lifts, there will always be a lift attendant present to monitor the lift to ensure the occupant enters and exits the lift safely and is properly positioned on the platform before activating the lift. When the lift attendant is correctly monitoring the lift occupant, as they should, even if the occupant were to exit the vehicle by backing onto the lift, if the inner roll stop did begin to deploy while it was occupied the lift attendant can quickly stop lift operation.

Per the petitioners, although Classic lifts used as private use lifts may not have the retention belt in all instances, if a passenger who is also the operator of the private use lift were to disembark the vehicle backwards and remain partially on the inner roll stop, the operator/passenger would simply need to release the momentary switch on the control pendant to automatically and immediately stop the operation of the lift. Because the control pendant utilizes a momentary switch, as soon as the individual releases the activation button the lift ceases operation. In this situation, and despite all the other factors which are necessary to create the condition in the first place, an operator/passenger can immediately prevent further movement of the inner roll stop. Private use lifts without a retention belt still have an operable outer barrier and handrails for protection. In addition, consistent with FMVSS No. 403, the private use lifts all have operating instructions near the lift controls and in the vehicle owner's manual, ''that contain a warning that wheelchairs

[1] The reason why loading with the occupant's back to the vehicle is the standard practice is that it is designed to prevent injury to the occupant's lower extremities and feet.

[2] In the pictorials on their websites, competitors also promote that the appropriate way to enter and exit the platform lift is facing away from the vehicles.

[3] See Best Practices for Loading and Unloading Wheelchair Students.

[4] See School Bus Driver In-Service Safety-Series.

[5] Ricon says that in response to a comment from a manufacturer during the FMVSS No. 403 rulemaking about inconsistent loading direction in the manufacturer's operator manual and the test procedure, NHTSA concluded that since the ADA does not apply to private lifts, the loading requirements were not inconsistent with the ADA. The Agency did not, however, address that same concern as it applied to public use lifts and thus, it remains an open point that was not addressed through the rulemaking process. *See* 67 FR 49416 (December 27, 2002)

should back onto the platform when entering from the ground.''

3. NHTSA has previously granted petitions where wheelchair lifts did not meet the performance requirements of FMVSS No. 403.

The petitioners argue that the Agency has granted inconsequentiality petitions where the manufacturer has not met the performance requirements of FMVSS No. 403, finding that the noncompliance did not pose an increased risk to safety as the lift is used in the real world. The performance of Ricon's platform lifts is consistent with this precedent.

For example, the Agency granted a petition for decision of inconsequential noncompliance submitted by The Braun Corporation (Braun) where the lift handrails did not meet the values for deflection force stated in FMVSS No. 403. The Agency recognized that while the handrails collapsed and did not meet the displacement requirement, they did not do so catastrophically. The Agency explained the failure ''would not cause the passenger to become unstable, adversely interact with the vehicle, or pose a safety concerns that the handrail requirements were intended to address'' and that its concern in instituting the deflection force requirement was the possibility of a catastrophic failure of the handrails, which would expose the occupant to a risk of injury. According to the petitioners, in granting the petition, the Agency not only ''anticipated that future tests will specify placement and direction of forces that will be more focused to address worst-case handrail displacement and real-world safety problems,'' but it also recognized the noncompliance did not ''pose a safety concern that the handrail requirements were intended to address.'' *See* 72 FR 19754 (April 19, 2007). Thus, the Agency has recognized that there are inherent provisions in FMVSS No. 403 that may not test for the types of safety risks that can arise in actual use and are therefore inconsequential.

The petitions further note that as with the Agency's finding with the Braun petition, in actual use, the Classic lifts do not pose a safety risk. This is because the inner barrier interlock would sense the presence of the rear wheels of the wheelchair occupant who is loaded and unloaded facing away from the vehicle. The heavier weight of the rear wheels is picked up by the sensors and the inner barrier interlock is activated. The interlock performance is restricted only under the set up per the test procedure, with the front wheels on the inner roll stop and facing the vehicle.

4. In addition, Navistar has reviewed warranty records, field reports, and other applicable Navistar system and determined the following:

a. Navistar has not received any complaints or other notices from vehicle owners or others regarding this issue.

b. Navistar is not aware of any accidents or injuries that have occurred because of this issue.

c. Navistar is not aware of any warranty claims for this issue.

The petitioners concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that their petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

The petitioner's complete petitions and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on these petitions only applies to the subject lifts and buses that the petitioners no longer controlled at the time it determined that the noncompliance existed. However, any decision of these petitions does not relieve vehicle or equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant lifts and buses under their control after the petitioners notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2021–09051 Filed 4–29–21; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0096, Notice 1]

Receipt of Petitions for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petitions.

SUMMARY: Ricon Corporation (Ricon), has determined that certain S-Series and K-Series Titanium wheelchair lifts do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform Lift Systems for Motor Vehicles.* Due to Ricon's determination, Navistar, Inc. on behalf of IC Bus, LLC (Navistar), and Daimler Trucks North America (DTNA), who installed the S-Series and K-Series Titanium wheelchair lifts in their buses, determined that certain model year (MY) 2015–2019 IC and Thomas Built buses do not comply with FMVSS No. 404, *Platform Lift Installation in Motor Vehicles.* Ricon, Navistar, and DTNA, collectively referred to as the ''the petitioners,'' filed the appropriate noncompliance reports and petitioned NHTSA for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of the petitioners' petitions.

DATES: The closing date for comments on the petition is June 1, 2021.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.

• Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered fully possible.

When the petitions are granted or denied a notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: Ricon determined that certain S-Series and K-Series Titanium wheelchair lifts do not fully comply with paragraph S6.10.2.4 of FMVSS No. 403, *Platform Lift Systems for Motor Vehicles* (49 CFR 571.403) and filed a noncompliance report dated July 4, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Ricon subsequently petitioned NHTSA on August 1, 2018, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

Because of Ricon's determination, Navistar and DTNA, who installed the S-Series and K-Series Titanium wheelchair lifts in their buses, determined that certain model year (MY) 2015–2019 IC and Thomas Built buses do not comply with paragraph S4.1.1 of FMVSS No. 404, *Platform Lift Installation in Motor Vehicles* (49 CFR 571.404). Navistar filed a noncompliance report dated August 17, 2018, and DTNA filed a noncompliance report dated August 23, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Subsequently, Navistar petitioned NHTSA on August 31, 2018, and DTNA petitioned NHTSA on September 21, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of the petitioners' petitions is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Equipment and Vehicles Involved: On July 4, 2018, Ricon submitted a noncompliance report and then on August 1, 2018, subsequently submitted a petition that reported approximately 4,375 S-Series and K-Series Titanium wheelchair lifts, manufactured between October 2, 2012, and May 9, 2018, are potentially involved.

In concert with Ricon's filings, Navistar and DTNA who installed the S-Series and K-Series Titanium wheelchair lifts sold by Ricon in their vehicles also filed noncompliance reports and inconsequential noncompliance petitions. Appropriately, Navistar and DTNA determined the following vehicles are potentially involved:

Approximately 631 MY 2015–2019 IC CE buses, manufactured between April 10, 2014, and May 9, 2018.

Approximately 84 MY 2015–2019 Thomas Built Series Saf-T-Liner C2 and HDX buses, manufactured between June 16, 2014, and January 11, 2018.

Accordingly, Ricon reported that 4,375 S-Series and K-Series Titanium wheelchair lifts to be potentially involved while the OEMs reported, in total, 715 vehicles with the noncompliant S-Series and K-Series Titanium wheelchair lifts potentially involved. NHTSA made inquiries to Ricon to try to reconcile the difference in number of lifts reported versus the number of vehicles reported on multiple occasions. Then in an email dated June 10, 2020, Ricon provided a table that reported that 4,481 S-Series and K-Series Titanium wheelchair lifts were produced, with 312 going to dealers, 4,129 going to OEMs, and 40 to its parent company, Wabtec Corporation (Wabtec). Below is a table that outlines the different numbers as reported by Ricon, by date, for the S-Series and K-Series Titanium wheelchair lifts and the total number of vehicles as reported by the OEMs.

RICON S-SERIES AND K-SERIES TITANIUM WHEELCHAIR LIFTS POTENTIALLY INVOLVED

	Ricon's 7/4/18 reporting	Ricon's 6/10/20 reporting	Total OEM 573 reporting
Dealers	.....	312	.....
OEMs	.....	4,129	.....
Wabtec*	.....	40	.....
Total	4,375	4,481	715

*Ricon is a subsidiary of WABTEC.

The total number of vehicles reported by the OEMs has not changed and the number S-Series and K-Series wheelchair lifts as reported by Ricon on June 10, 2020, are the most up-to-date numbers. Based on current numbers as shown in the table above, there are still 3,766 lifts that have not been accounted for by sales to vehicle manufacturers and Ricon believes that these lifts were distributed and sold through other channels. Despite several meetings and communication with Ricon directed toward identifying their ultimate destination, NHTSA has not been able

to determine where and how the lifts not sold to vehicle manufacturer were sold. NHTSA also feels it is prudent to emphasize that any decision on these petitions does not relieve vehicle or equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant lifts and vehicles under their control after the petitioners notified them that the subject noncompliance existed.

III. Noncompliance: Ricon explains that its Titanium S-Series and K-Series platform lifts do not comply with the inner barrier interlock requirements of FMVSS 403, S6.10.2.6 when tested in accordance with the test procedure at S7.6.1. The subject lifts, as installed in certain commercial buses and school buses, do not comply with paragraph S4.1.1 of FMVSS No. 404.

IV. Requirements: Paragraph S6.10.2.4 of FMVSS No. 403, includes the requirements relevant to the deployment of the inner roll stop. When the platform reaches a level where the inner roll stop is designed to deploy, the platform must stop unless the inner roll stop has deployed. Verification with this requirement is made by performing the test procedure specified in S7.6.

Paragraph S4.1.1 of FMVSS No. 404, includes lift-equipped buses, school buses, and MPVs other than motor homes with a GVWR greater than 4,536 kg (10,000 lb.) must be equipped with a public use lift certified as meeting FMVSS No. 403.

V. Summary of Petitions: The following views and arguments presented in this section, ''V. Summary of Petitions,'' are the views and arguments provided by the petitioners. They have not been evaluated by the Agency and do not reflect the views of the Agency. The petitioners described the subject noncompliance and stated their belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

In support of their petitions, the petitioners submitted the following arguments:

1. *The performance of the Ricon lifts do not create an increased risk to safety:*

(a) The petitioners state the S-Series and K-Series Titanium lifts are commercial application lifts and are public use lifts. The inner barrier is designed to lay flat for the lift occupant to easily transition from the platform into the vehicle and vice versa. When the inner barrier is deployed (*i.e.* raised upright), it prevents the occupant from moving off the platform edge at the start of the vehicle. The inner barrier interlock on the Titanium units utilizes a rod which travels across the front of the base plate. There are plastic shoe levers at three different locations in the center and towards each side of the inner barrier. At the end of the rod in front of the vertical arm is a torsion spring that activates a micro switch. The design of the lift operates so that the closer that weight is placed to the hinge of the inner barrier bridge plate, the further away it is located from the torsion spring and micro switch when the bridge plate is down. More force is required to move the opposite end of the bridge plate the same vertical distance to depress the torsion spring that activates the micro switch. Because the torsion spring is weight sensing, if the single front wheel of the wheelchair test device is located within 8 inches of the inner barrier hinge, there is insufficient weight sensed to activate the inner barrier interlock.

(b) Per the petitioners, the operation of the lifts does not cause an increased risk to safety. As an initial matter, the position of the wheelchair test device specified in the test procedure is inconsistent with the appropriate use of the lifts and does not pose a safety risk in real-world operation. The test procedure at S7.6.2 provides that the platform should be maneuvered to vehicle floor level loading position and the wheelchair test device should be placed on the platform with the front wheel of the wheelchair test device facing the vehicle. The instruction in the test procedure to set up the wheelchair test device facing the entrance to the lift is contrary to the instructions provided in the Ricon operator's manual instructions and contrary to industry practice. The industry standard practice is to load wheelchair occupants onto a lift with their back to the vehicle. Loading in this direction prevents injury to the occupant's lower extremities and feet. The petitioners note that as written, the instructions in the test procedure are inconsistent with the industry standard and Ricon's operator's manual.[1] An excerpt from the operator's manual for the Titanium lifts describes how an occupant should board the lift (facing away from the vehicle). Similar instructions are provided for an occupant exiting the vehicle that also indicate that the occupant should face outward and away from the vehicle:

(c) The petitioners state it uses decals to indicate to the operator the correct means to load an occupant onto each wheelchair lift. The decals are placed on the vertical arms of the lift and face outward of the vehicle so that they are visible to the lift operator when loading a passenger onto the lift from ground level.

(d) Ricon next contends there is no increased risk to safety because placing a single front wheel on the inner roll stop, as required by the test procedure, is not a natural position for a wheelchair to enter and exit the lift. Even assuming an occupant was loaded and unloaded in the reverse position and contrary to the instructions provided in the owner's manual, the wheelchair must be manipulated to achieve a position where one front wheel is placed on the inner roll stop. To do this, the wheelchair test device must be shifted back and forth (*i.e.* brought onto the inner roll stop, moved backwards and moved forwards at an angle) multiple times to position the test device so that only one front wheel is placed on the inner roll stop. This backwards and forwards shifting motion is not a natural motion and would not occur in ordinary use. In ordinary use, the wheelchair occupant enters and exits the vehicle with the occupant facing the street. Further, even if the occupant were to enter the lift backwards (*i.e.* facing the vehicle, per the test procedure), the platform lift is wide enough for the average sized wheelchair and scooter to fully roll onto the platform in a single motion so that the single front wheel of a wheelchair would not contact the inner roll stop within 8 inches of the hinge. The Titanium units (as with all Ricon's lifts) meet the requirements for ADA standard vehicle door widths. Consequently, the Titanium units are wide enough for the average sized wheelchair and scooter to roll onto the lift in a single motion.

(e) The petitioners add that these lifts incorporate a retention belt system as part of the platform lift design. The retention belt consists of durable webbing which is attached to and when belted, extends across each of the handrails. The retention belt serves dual purposes and is a redundant safety feature. The retention belt is a means to physically secure an occupant within the lift. In addition, the retention belt

[1] The Titanium units are public use lifts. During the FMVSS No. 403 rulemaking process, a manufacturer noted that portions of the rule had testing conducted in one direction when the owner's manual provided for a different loading direction. *See* 67 FR 42526. The manufacturer took the position that such inconsistencies were contrary to the requirements of the ADA. In response, NHTSA concluded that since the ADA does not apply to private use lifts, the loading requirements were not inconsistent with the ADA. Here, however, the Ricon lifts are used as public use lifts. Although the ADA states that the lift shall permit for boarding and unboarding in both directions the industry practice and Ricon's (and other manufacturers) instructions provide for boarding in the reverse as an added level of occupant protection.

acts as an electrical interlock that is linked to the operation of the lift. If the retention belt is buckled, the electrical circuit is closed and the platform and outer barrier can operate when the buttons on the operator's pendant are pressed. If the belt is not buckled, the electrical circuit is broken and there is no power sent to any part of the lift and the platform cannot move and the inner roll stop will not deploy. However, in actual use outside of the test environment, the retention belt would not be buckled (and the lift would not be powered) when the occupant is attempting to enter the vehicle from the ground. Consistent with the operator's instructions provided above, the retention belt is unbuckled as the occupant is entering the vehicle so that even if a single front wheel was present within 8 inches of the inner roll stop hinge, there is no safety consequence because the lift is not powered.

(f) The petitioners contend that the noncompliance with the inner barrier interlock arises only when the lifts are tested with one front wheel of the wheelchair test device located within 8 inches from the hinge and when the wheelchair is manipulated in the manner provided in the test procedure. When the lift is used consistent with the instructions provided with the operator's manual, the occupant enters and exits the lift facing away from the vehicle so that the two rear wheels of the wheelchair contact with the inner roll stop. Consistent with real-world use (and as demonstrated through the product's performance in the field), there is no safety risk because the weight of the rear wheels is sensed by the torsion spring so that the interlock is activated.

2. *NHTSA has previously granted petitions where wheelchair lifts did not meet the performance requirements of FMVSS No. 403.*

(a) In support of the petition, the petitioners contend the Agency has granted inconsequentiality petitions where the manufacturer has not met the performance requirements of FMVSS No. 403, finding that the noncompliance did not pose an increased risk to safety as the lift is used in the real world. Per The petitioners, the performance of their platform lifts is consistent with this precedent.

(b) For example, the petitioners note the Agency granted a petition for decision of inconsequential noncompliance submitted by The Braun Corporation (Braun) where the lift handrails did not meet the values for deflection force. While the handrails collapsed when exposed to forces above the threshold requirement, the handrail~ did not collapse or fail catastrophically. Per The petitioners, the Agency explained that its concern in instituting the deflection force requirement was the possibility of a catastrophic failure of the handrails which would expose the occupant to a risk of injury. In granting the petition, the petitioners state the Agency ''anticipated that future tests will specify placement and direction of forces that will be more focused to address worst-case handrail displacement and real-world safety problems.'' The petitioners further claim the Agency recognized the noncompliance, in this case, did not ''pose a safety concern that the handrail requirements were intended to address.'' *See* 72 FR 19754 (April 19, 2007).

(c) The petitioners argue that as with the Agency's findings with the Braun petition, in actual use and consistent with the operator's manual, the Titanium units do not pose a safety risk in the real world. This is because the inner barrier interlock would sense the presence of the rear wheels of the wheelchair occupant who is loaded and unloaded facing away from the vehicle. The heavier weight of the rear wheels is picked up by the sensors and the inner barrier interlock is activated. The interlock performance is restricted only under the set up per the test procedure, with a single front wheel facing the vehicle.

(d) The petitioners contend that NHTSA has also granted an inconsequentiality petition where the deployed wheelchair retention device was unable to withstand the required 1,600 pounds of force. In that case, the Maxon Industry Inc. (Maxon) lifts included some designs where the outer barrier served as the wheelchair retention device and other designs with both a belt retention device and an outer barrier. The belt retention device also served as an electronic interlock that precluded the lift from moving up or down unless buckled.[2] The petitioners states the Agency granted the petition as to the units which incorporated the retention belt and noncompliant outer barrier, finding that such a design did not create an increased risk to safety since the belt's operation precluded the lift from moving and prevented the stated safety concern. Per The petitioners, the Agency denied the petition as to those units without the retention belt, reasoning that the lift occupant would only be relying upon a noncompliant outer barrier for protection. *See* 72 FR 28759 (May 22, 2007).

(e) The petitioners note that the Titanium units incorporate a retention belt that completely prevents lift electrical operation unless the retention belt is buckled.[3] The retention belt would not be buckled, when the occupant is attempting to enter the vehicle, so that even in the unlikely event that a single front wheel of the wheelchair were placed 8 inches or less from the inner barrier hinge, per the test procedure, the lift would not be energized and the lift could not move at all. The petitioners argue that in granting the Maxon petition, the Agency recognized and accepted that the retention belt acted as a redundant safety feature precluded any safety risk. The belt interlock in the Ricon lifts as well as the operator's manual instructions create similar redundancies and offer equivalent protection to occupants.

(f) Finally, the petitioners argue the environment in which these lifts are used diminishes any potential risk to safety. All the lifts at issue are for commercial applications and operate as a public use lifts. In this context, there will be a lift attendant present to monitor the lift to ensure the occupant enters and exits the lift safely. When the lift attendant for the public use lift is following the operator's manual, there should not be an instance where the lift platform is powered and the occupant is unrestrained. Ricon has used this same design lift since the start of production for decades and is not aware of any claims or injury involving the performance of the inner roll stop interlock.

The petitioners concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that their petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

The petitioners' complete petitions and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice.

[2] Ricon is aware of multiple manufacturers that use a belt interlock that functions in the same or similar manner to restrict the operation of the platform lift.

[3] The Ricon lifts incorporate a means of manually descending the lift to allow a rider to exit the vehicle in the event of a lift malfunction.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on these petitions only applies to the subject lifts and buses that the petitioners no longer controlled at the time it determined that the noncompliance existed. However, any decision of these petitions does not relieve vehicle or equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant lifts and buses under their control after the petitioners notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2021–09050 Filed 4–29–21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0095, Notice 1]

Receipt of Petitions for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petitions.

SUMMARY: Ricon Corporation (Ricon), has determined that certain Mirage, S-Series, and K-Series wheelchair lifts do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform Lift Systems for Motor Vehicles.* Because of Ricon's determination, various vehicle manufacturers who installed the S-Series, and K-Series wheelchair lifts in their motor vehicles determined that their motor vehicles do not comply with FMVSS No. 404, *Platform Lift Installation in Motor Vehicles.* Ricon and the various vehicle manufacturers, collectively referred to as the ''the petitioners,'' filed the appropriate noncompliance reports and subsequently petitioned NHTSA for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of the petitioners' petitions.

DATES: The closing date for comments on the petition is June 1, 2021.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered fully possible.

When the petitions are granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: Ricon determined that certain Mirage, S-Series, and K-Series wheelchair lifts do not fully comply with paragraph S6.10.2.6 of FMVSS No. 403, *Platform Lift Systems for Motor Vehicles* (49 CFR 571.403) and filed noncompliance reports, dated May 15, 2018, and May 25, 2018, (and later amended their May 15, 2018 noncompliance report on June 12, 2019) pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Ricon subsequently petitioned NHTSA on June 13, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Because of Ricon's determination, the following vehicle manufacturers who installed the S Series, and K Series wheelchair lifts in their motor vehicles determined that their motor vehicles do not fully comply with paragraph S4.1.1 of FMVSS No. 404, *Platform Lift Installation in Motor Vehicles* (49 CFR 571.404). The various vehicle manufacturers also filed noncompliance reports, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* and subsequently petitioned NHTSA, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

ElDorado Mobility, Inc. (ElDorado) has determined that certain model year (MY) 2014–2018 Revability Advantage Ram Promaster 1500 and 2500 motor vehicles do not fully comply with paragraph S4.1.1 of FMVSS No. 404. ElDorado filed a noncompliance report dated July 3, 2018, and later amended

it on August 11, 2018. ElDorado petitioned NHTSA on August 6, 2018.

Champion Bus, Inc. (Champion) has determined that certain MY 2012–2018 Champion buses do not fully comply with paragraph S4.1.1 of FMVSS No. 404. Champion filed a noncompliance report dated July 5, 2018 and later amended that report on August 11, 2018. Champion petitioned NHTSA on August 8, 2018.

Collins Bus Corporation (Collins) has determined that certain MY 2012–2018 Collins school buses do not fully comply with paragraph S4.1.1 of FMVSS No. 404. Collins filed a noncompliance report dated July 10, 2018, and later amended it on August 11, 2018. Collins petitioned NHTSA on August 7, 2018.

ElDorado National Kansas (ENC) has determined that certain MY 2012–2018 ENC buses do not fully comply with paragraph S4.1.1 of FMVSS No. 404. ENC filed a noncompliance report in July 3, 2018, and later amended it on August 11, 2018. ENC petitioned NHTSA on August 6, 2018.

Daimler Trucks North America, LLC (DTNA) has determined that certain MY 2013–2019 Thomas Built Buses do not fully comply with paragraph S4.1.1 of FMVSS No. 404. DTNA filed two noncompliance reports, both dated July 18, 2018, and later amended both reports on August 15, 2018. DTNA petitioned NHTSA on August 15, 2018.

Navistar, Inc. (Navistar) has determined that certain MY 2013–2019 IC buses do not fully comply with paragraph S4.1.1 of FMVSS No. 404. Navistar filed two noncompliance reports both dated June 20, 2018, and both were later amended August 17, 2018. Navistar petitioned NHTSA on July 19, 2018 and amended the petition on September 24, 2018.

This notice of receipt of petitions is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercises of judgment concerning the merits of the petitions.

II. Equipment and Vehicles Involved: On May 15, 2018, Ricon submitted a noncompliance report that reported approximately 29,245 S-Series and K-Series wheelchair lifts, manufactured between May 7, 2012, and May 9, 2018, were potentially involved. In conjunction with its May 15, 2018, noncompliance report, Ricon submitted a second noncompliance report on May 25, 2018, that reported approximately 2,454 Mirage wheelchair lifts, manufactured between October 2, 2012, and May 18, 2018, were also potentially involved. On June 13, 2018, Ricon filed an inconsequential noncompliance petition that reported 23,379 S-Series and
K-Series wheelchair lifts and 2,454 Mirage wheelchair lifts were involved. NHTSA contacted Ricon to inquire about the differences in the number of S-Series and K-Series wheelchair lifts potentially involved as reported in its petition and noncompliance report. This led to Ricon amending their May 15, 2018 noncompliance report on June 12, 2019 changing the number of S-Series and K-Series wheelchair lifts potentially involved from 29,245 to 23,379 and the production dates from May 7, 2012, through May 9, 2018, to October 2, 2012, through May 9, 2018.

In concert with Ricon's filings, 6 original equipment manufacturers (OEMs) who Ricon sold lifts to and who installed the S-Series and K-Series lifts in its vehicles also filed noncompliance reports and inconsequential noncompliance petitions. Appropriately, ElDorado, Champion, Collins, ENC, DTNA, and Navistar determined the following vehicles are potentially involved:

Approximately 42 MY 2014–2018 Eldorado Revability Advantage Ram Promaster 1500/2500 motor vehicles, manufactured between September 1, 2014, and June 30, 2018.

Approximately 1,500 MY 2012–2018 Champion Challenger, Defender, Crusader, American, American Coach, American Crusader, CTS–FE, CTS–RE, HC American, Platinum Shuttle, and Stacked Rail Impulse buses, manufactured between May 7, 2012, and May 9, 2018.

Approximately 1,947 MY 2012–2018 Collins multi-function school activity buses (MFSAB) and Commercial buses, manufactured between May 1, 2012, and June 1, 2018.

Approximately 1,447 MY 2012–2018 Eldorado, Aerotech, Aerolite, Aero Elite, Transtech, Advantage, World Trans, and Impulse buses, manufactured between May 1, 2012, and June 1, 2018.

Approximately 31 MY 2013–2019 Thomas Built Buses Saf-T-Liner C2, Saf-T-Liner EFX, and Saf-T-Liner HDX commercial buses, manufactured between July 21, 2012, and April 4, 2018, and approximately 3,834 MY 2013–2019 Thomas Built Buses Saf-T-Liner C2, Saf-T-Liner EFX, and Saf-T-Liner HDX school buses, manufactured between May 5, 2012, and July 4, 2018.

Approximately 2,892 MY 2013–2014 IC Bus AE, MY 2013–2015 IC Bus BE, MY 2013–2019 IC Bus CE, MY 2013–2014 IC Bus RE, and 2016–2017 IC Bus RE school buses, manufactured between May 10, 2012, and May 2, 2018, and approximately 29 MY 2013–2018 IC Bus CE and RE commercial buses, manufactured between May 10, 2012, and November 7, 2017.

Ricon reported that 2,454 Mirage wheelchair lifts and 23,379 S-Series and K-Series wheelchair lifts are potentially involved while the OEMs reported, in total, 11,722 vehicles with the noncompliant S-Series and K-Series wheelchair lifts are potentially involved. To date, no OEMs have filed for the Mirage wheelchair lifts. On multiple occasions, NHTSA made inquiries to Ricon to reconcile the difference in the number of lifts Ricon reported as containing the noncompliance versus the number of vehicles equipped with these lifts. On June 10, 2020, Ricon provided a table that reported that 30,127 S-Series and K-Series wheelchair lifts were produced, with 7,055 going to dealers, 22,850 going to OEMs, and 222 to its parent company Wabtec Corporation (Wabtec). Below is a table that outlines the different numbers as reported by Ricon, by date, for the S-Series and K-Series wheelchair lifts and the total number of vehicles as reported by the OEMs.

RICON S-SERIES AND K-SERIES WHEELCHAIR LIFTS POTENTIALLY INVOLVED

	Ricon 5/15/18 reporting	Ricon 6/12/19 reporting	Ricon 6/10/20 reporting	Total OEM 573 reporting
DEALERS	.....	.....	7,055	.....
OEMs	.....	.....	22,850	.....
WABTEC *	.....	.....	222	.....
Total	29,245	23,379	30,127	11,722

* Ricon is a subsidiary of WABTEC

The total number of vehicles reported by the OEMs has not changed and the number S-Series and K-Series wheelchair lifts as reported by Ricon on June 10, 2020, are the most up-to-date numbers. Based on current numbers as shown in the table above, there are still 18,405 lifts that have not been accounted for. Despite several meetings and communication with Ricon aimed at identifying the distribution and disposition of lifts not sold directly to vehicle manufacturers NHTSA has not been able to obtain additional information about those lifts. NHTSA also feels it is prudent to emphasize that any decision on these petitions does not relieve vehicle or equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant lifts and vehicles under their control after the petitioners notified them that the subject noncompliance existed.

III. Noncompliance: Ricon explains that it's S-Series and K-Series platform lifts and its Mirage platform lifts do not comply with the outer barrier interlock requirements of FMVSS 403, S6.10.2.6 when tested in accordance with the test procedure at S7.5.1.1 and S7.5.1.2. To that end, the subject lifts, as installed in certain commercial buses or school buses, do not comply with paragraph S4.1.1 of FMVSS No. 404.

IV. Rule Requirements: Paragraph S6.10.2.6 of FMVSS No. 403, includes vertical deployment requirements for a platform lift equipped with an outer barrier when occupied by portions of the passenger's body or mobility aid during the operation of the lift. When the platform stops, the vertical change in distance of the horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the outer barrier) must not be greater than 13 mm (0.5 in). Verification of compliance with this requirement is made using the test procedure specified in paragraph S7.5.1.

Paragraph S4.1.1 of FMVSS No. 404, requires lift-equipped buses, school buses, and MPVs other than motor homes with a GVWR greater than 4,536 kg (10,000 lbs.) to be equipped with a public use lift certified as meeting FMVSS No. 403.

V. Summary of Petitions: The petitioners described the subject noncompliance and stated their belief that the noncompliance is inconsequential as it relates to motor vehicle safety. In support of their petitions, the petitioners submitted the following arguments:

1. *The performance of the Ricon lifts do not create an increased risk to safety:*

S-Series and K-Series Lifts

(a) Per The petitioners, the S-Series and K-Series lifts are used as both public use and private use lifts. These lifts have a retention belt as part of the platform lift design. The retention belt consists of durable webbing which is attached to and when belted, extends across each of the handrails. The retention belt serves dual purposes and is a redundant safety feature. The retention belt is a means to physically secure an occupant within the lift. In addition, the retention belt acts as an electrical interlock that is linked to the operation of the lift. If the retention belt is buckled, the electrical circuit is closed and the platform and outer barrier can operate when the buttons on the operator's pendant are pressed. If the belt is not buckled, the electrical circuit is broken and there is no power sent to any part of the lift, the platform cannot move and the outer barrier will not deploy in either direction.

(b) The petitioners contend the nonconformance to the outer barrier interlock provision arises only when the unit is tested to the directions provided in the test procedure itself, when the retention belt is buckled and the wheelchair test device attempts to access the outer barrier. However, in actual use the outside of the test environment, the retention belt would not be buckled (and the lift would not be powered at any time an occupant is attempting to traverse the outer barrier).

(c) The petitioners state that under the test conditions in S7.5.1.1, once the platform lift is placed at the ground level loading position with the outer barrier fully deployed, the wheelchair test device is placed on the platform. Once the occupant is secured by the buckled retention belt, the length of the belt prevents the occupant from physically accessing the outer barrier. If the belt is unbuckled, no power is sent to either the lift or the outer barrier and they will not be able to move. Therefore, any time an occupant is present on the platform portion of the lift, the design of the lift protects the occupant from inadvertent movement of the outer barrier.

(d) Alternatively, the petitioners contend the test procedure provides that if the wheelchair test device cannot access the outer barrier because of a belt retention type device, the test may alternatively be conducted with the wheelchair test device on the ground facing the entrance to the lift. An occupant entering the lift from the ground level also does not present an increased risk to safety. As an initial matter, if an occupant were attempting to access the platform from ground level outside the vehicle, the outer barrier would not be able to move unless the belt was buckled. If the belt is buckled, it stretches across the handrails and the occupant cannot access the platform because the secured belt blocks the way. Once the lift is maneuvered to ground level and the outer barrier is deployed, the lift attendant or private individual must unbuckle the belt to allow access to the platform. At this point, the electrical circuit is broken and there is no power to the lift or outer barrier and no risk to the occupant accessing the lift. Once the occupant is safely positioned on the platform, the belt is re-buckled and power is restored.

(e) Per the petitioners, a separate issue is that the test procedure in S7.5.1.1 provides that when loading from the ground, the wheelchair test device should be placed on the ground facing the entrance to the lift. The instruction to have the wheelchair test facing the entrance to the lift is contrary to the Ricon operator's manual instructions and industry practice. The industry standard practice is to load wheelchair occupants onto a lift with their back to the vehicle. Loading in this direction prevents injury to the occupant's lower extremities and feet. As written, the instructions in the test procedure are inconsistent with the industry standard and Ricon's operator's manual.[1]

(f) The petitioners argue that it provides instructions in the operator's manual describing how an occupant should board the lift and how an occupant should exit a vehicle. Ricon also provides decals to indicate to the operator the correct means to load an occupant onto each wheelchair lift, which are placed on the vertical arms of the lift and face outward of the vehicle so that they are visible when loading a passenger onto the lift from the ground level.

[1] During the FMVSS No. 403 rulemaking process, a manufacturer noted that portions of the rule had testing conducted in one direction when the owner's manual provided for a different loading direction. *See* 67 FR 425–26. The manufacturer took the position that such inconsistencies were contrary to the requirements of the ADA. In response, NHTSA concluded that since the ADA does not apply to private use lifts, the loading requirements were not inconsistent with the ADA. Here, however, the Ricon lifts are used as public use lifts. Although the ADA states that the lift shall permit for boarding and unboarding in both directions, the industry practice and Ricon's (and other manufacturers) instructions provide for boarding in the reverse as an added level of occupant protection.

Mirage Lifts

(a) Per The petitioners, the Mirage lifts are public use lifts. The Mirage lifts also incorporate a belt retention device into its design, but the belt interlock functions somewhat differently than the S-Series and K-Series lifts. The belt on the Mirage lifts acts as an interlock sensor that detects whether the outer barrier is in a vertical (closed) position. When the outer barrier is closed and the retention belt is buckled, the platform can operate. If the belt is unbuckled, the outer barrier can move from horizontal (open) to vertical (closed), but the platform itself cannot operate.

(b) The petitioners state that as with the S-Series and K-Series lifts, when an occupant is on the platform, he/she is to be secured by the restraint belt. To exit the lift and cross the outer barrier, the belt must be unbuckled. Unbuckling the retention belt eliminates power sent to the platform.

(c) The petitioners argue that NHTSA's concern in adopting the outer barrier interlock in 2007 was that occupants could be pitched from the lift if the lift moved when the outer barrier was occupied. This concern does not exist in Ricon's design. When the belt is unbuckled, as it would be anytime a person is entering or exiting the lift, the platform is not powered and cannot move. If the belt is buckled and the lift is powered, the retention belt blocks access to the outer barrier if the occupant is present on the platform.

2. *NHTSA has previously granted petitions where wheelchair lifts did not meet the performance requirements of FMVSS No. 403.*

(a) Per the petitioners, the Agency has granted inconsequentiality petitions where the manufacturer has not met the performance requirements of FMVSS No. 403, finding that the noncompliance did not pose an increased risk to safety as the lift is used in the real world. The performance of Ricon's platform lifts are consistent with this precedent.

(b) For example, the petitioners contend the Agency granted a petition for decision of inconsequential noncompliance submitted by The Braun Corporation (Braun) where the lift handrails did not meet the values for deflection force. While the handrails collapsed when exposed to forces above the threshold requirement, the handrail did not collapse or fail catastrophically. The petitioners state the Agency explained that its concern in instituting the deflection force requirement was the possibility of a catastrophic failure of the handrails which would expose the occupant to a risk of injury. In granting the petition, the Agency ''anticipated that future tests will specify placement and direction of forces that will be more focused to address worst-case handrail displacement and real-world safety problems.'' The Agency, in the petitioners' view, recognized the noncompliance, in this case, did not ''pose a safety concern that the handrail requirements were intended to address.'' *See* 72 FR 19754 (April 19, 2007).

(c) The petitioners note that as with the Braun petition, the technical noncompliance in the Ricon outer barrier emerges only because of the revisions to the test procedure implemented in 2012. In actual use and consistent with the operator's manual, the retention belt should never be buckled (and it would be illogical to do so) when an occupant is attempting to traverse the outer barrier. As such, the noncompliance does not create a real-world safety concern and certainly not the type of safety concern that the outer barrier interlock was intended to address the movement of the lift platform while the outer barrier was occupied.

(d) The petitioners state that NHTSA has also granted an inconsequentiality petition submitted by Maxon Industry Inc. (Maxon) where the deployed wheelchair retention device was unable to withstand the required 1,600 pounds of force. In that case, the Maxon lifts included some designs where the outer barrier served as the wheelchair retention device and other designs with both a belt retention device and an outer barrier. The belt retention device also served as an electronic interlock that precluded the lift from moving up or down unless buckled.[2] Per The petitioners, the Agency granted the petition as to the units which incorporated the retention belt and noncompliant outer barrier, finding that such a design did not create an increased risk to safety since the belt's operation precluded the lift from moving and prevented the stated safety concern. The petitioners contend that the Agency denied the petition as to those units without the retention belt, reasoning that the lift occupant would only be relying upon a noncompliant outer barrier for protection. *See* 72 FR 28759 (May 22, 2007).

(e) The petitioners also state that Ricon lifts incorporate a retention belt that operates in the same manner as the belt described in the Maxon petition. In both cases, the belt precludes the lift from operating unless it is buckled. In granting the Maxon petition, the petitioners argue the Agency recognized the belt acted as a redundant safety feature (along with the technically noncompliant outer barrier) that precluded any safety risk. The belt interlock in the Ricon lifts as well as the operator's manual instructions create similar redundancies and offer equivalent protection to occupants.

(f) Finally, the petitioners state the environment in which these lifts are used diminishes any potential risk to safety. When operated as a public use lift, there will be a lift attendant present to monitor the lift to ensure the occupant enters and exits the lift safely. When the lift attendant or private individual is following the operator's manual, there should not be an instance where the lift platform is powered and the occupant is unrestrained. Ricon has used this same design lift since the start of production for decades and without incident as it relates to the performance of the outer barrier interlock.

The petitioners concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that their petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

The petitioner's petitions and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on these petitions only applies to the subject lifts and buses that the petitioners no longer controlled at the time it determined that the noncompliance existed. However, any decision of these petitions does not relieve vehicle or equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant lifts and buses under their control after the petitioners

[2] Ricon is aware of multiple manufacturers that use a belt interlock that functions in the same or similar manner to restrict the operation of the platform lift.

notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2021–09049 Filed 4–29–21; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons whose property and interests in property have been unblocked and have been removed from OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals (SDN) and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On April 23, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and they have been removed from the SDN List under the relevant sanctions authorities listed below.

Individuals

1. CARO ELENES, Henoch Emilio, Callejon del Sereno No. 4361, Col. Fracc. Jardines Universidad, Zapopan, Jalisco C.P. 45110, Mexico; Paseo del Bosque No. 2428, Colonia Lomas Altas, Zapopan, Jalisco, Mexico; Av. Pablo Neruda No. 4111, Casa 1, Colonia Lomas del Valle, Zapopan, Jalisco C.P. 45129, Mexico; Paseo de los Parques No. 3995, Interior 7, Zapopan, Jalisco C.P. 45110, Mexico; Loreto Mendez #4432, Guadalajara, Jalisco, Mexico; DOB 15 Mar 1980; POB Culiacan, Sinaloa, Mexico; alt. POB Guadalajara, Jalisco, Mexico; R.F.C. CAEH800315V38 (Mexico); C.U.R.P. CAEH800315HSLRLN07 (Mexico) (individual) [SDNTK] (Linked To: BLUE POINT SALT, S.A. DE C.V.; Linked To: DESARROLLOS BIO GAS, S.A. DE C.V.; Linked To: ECA ENERGETICOS, S.A. DE C.V.; Linked To: EVCOMER, S.A. DE C.V.; Linked To: PETRO BIO, S. DE R.L. DE C.V.; Linked To: PRONTO SHOES, S.A. DE C.V.; Linked To: REFORESTACIONES CARELES, S. DE P.R. DE R.L.; Linked To: ARRENDADORA TURIN, S.A.; Linked To: BARSAT, S.A. DE C.V.; Linked To: DESARROLLADORA SAN FRANCISCO DEL RINCON, S.A. DE C. V.; Linked To: DINERMAS, S. DE R.L. DE C.V.; Linked To: ENERGETICOS VAGO, S.A. DE C.V.; Linked To: FORTANAS, S. DE R.L. DE C.V.; Linked To: GRUPO BARSATERRA S.A. DE C.V.; Linked To: GRUPO ESPANOL ELCAR, S.A. DE C.V.; Linked To: MINERALES NUEVA ERA, S.A. DE C.V.; Linked To: MINERALES NUEVA GENERACION, S.A. DE C.V.; Linked To: NUEVA TERRA, S. DE R.L. DE C.V.; Linked To: OPERADORA ENGO, S.C.; Linked To: PETRO LONDON, S. DE R.L. DE C.V.; Linked To: PETRO MAS, S. DE R.L. DE C.V.; Linked To: PROMI FEL, S. DE R.L. DE C.V.; Linked To: TAXI AEREO NACIONAL DE CULIACAN, S.A.; Linked To: VILLAS DEL COLLI S.A. DE C.V.).

2. CARO ELENES, Hector Rafael (a.k.a. CARO HELENES, Hector Rafael), Callejon del Serrano 4361, Guadalajara, Jalisco, Mexico; Loreto Mendez #4432, Guadalajara, Jalisco, Mexico; San Gonzalo No. 1715, Colonia Santa Isabel, Zapopan, Jalisco C.P. 45110, Mexico; Calle Circuito Madrigal No. 4236 Interior 5, Colonia Santa Isabel, Zapopan, Jalisco C.P. 45110, Mexico; Avenida Acueducto No. 5056, Colonia Jardines de la Patria, Zapopan, Jalisco, Mexico; DOB 18 Dec 1975; POB Culiacan, Sinaloa, Mexico; R.F.C. CAEH751218JT4 (Mexico); C.U.R.P. CAEH751218HSLRLC01 (Mexico) (individual) [SDNTK] (Linked To: BLUE POINT SALT, S.A. DE C.V.; Linked To: DESARROLLOS BIO GAS, S.A. DE C.V.; Linked To: ECA ENERGETICOS, S.A. DE C.V.; Linked To: ORGANIC SALT, S.A. DE C.V.; Linked To: PETRO BIO, S. DE R.L. DE C.V.; Linked To: PRONTO SHOES, S.A. DE C.V.; Linked To: ARRENDADORA TURIN, S.A.; Linked To: BARSAT, S.A. DE C.V.; Linked To: DESARROLLADORA SAN FRANCISCO DEL RINCON, S.A. DE C. V.; Linked To: DINERMAS, S. DE R.L. DE C.V.; Linked To: ENERGETICOS VAGO, S.A. DE C.V.; Linked To: ESTACION DE SERVICIO ATEMAJAC, S.A. DE C.V.; Linked To: FORTANAS, S. DE R.L. DE C.V.; Linked To: GRUPO BARSATERRA S.A. DE C.V.; Linked To: GRUPO ESPANOL ELCAR, S.A. DE C.V.; Linked To: INMOBILIARIA PROMINENTE, S.A. DE C.V.; Linked To: NUEVA TERRA, S. DE R.L. DE C.V.; Linked To: OPERADORA ENGO, S.C.; Linked To: PETRO LONDON, S. DE R.L. DE C.V.; Linked To: PETRO MAS, S. DE R.L. DE C.V.; Linked To: PROMI FEL, S. DE R.L. DE C.V.; Linked To: SERVICIO Y OPERADORA SANTA ANA, S.A. DE C.V.; Linked To: TAXI AEREO NACIONAL DE CULIACAN, S.A.; Linked To: VILLAS DEL COLLI S.A. DE C.V.).

3. CARO ELENES, Mario Yibran (a.k.a. CARO, Gibran), Callejon del Sereno No. 4361, Col. Fracc. Jardines Universidad, Zapopan, Jalisco C.P. 45110, Mexico; Calle Loreto Mendez 4432, Sector Hidalgo, Guadalajara, Jalisco, Mexico; DOB 11 Jun 1983; POB Guadalajara, Jalisco, Mexico; R.F.C. CAEM830611SXD (Mexico); C.U.R.P. CAEM830611HJCRLR05 (Mexico) (individual) [SDNTK] (Linked To: PETRO BIO, S. DE R.L. DE C.V.; Linked To: PRONTO SHOES, S.A. DE C.V.; Linked To: REFORESTACIONES CARELES, S. DE P.R. DE R.L.; Linked To: BARSAT, S.A. DE C.V.; Linked To: DINERMAS, S. DE R.L. DE C.V.; Linked To: NUEVA TERRA, S. DE R.L. DE C.V.; Linked To: PETRO MAS, S. DE R.L. DE C.V.; Linked To: PROMI FEL, S. DE R.L. DE C.V.; Linked To: TAXI AEREO NACIONAL DE CULIACAN, S.A.).

4. CARO ELENES, Roxana Elizabeth, Callejon del Sereno No. 4361, Col. Fracc. Jardines Universidad, Zapopan, Jalisco C.P. 45110, Mexico; San Gonzalo No. 1715, Colonia Santa Isabel, Zapopan, Jalisco C.P. 45110, Mexico; DOB 17 Jan 1978; POB Culiacan, Sinaloa, Mexico; R.F.C. CAER780117MK8 (Mexico); C.U.R.P. CAER780117MSLRLX03 (Mexico) (individual) [SDNTK] (Linked To: HACIENDA LAS LIMAS, S.A. DE C.V.; Linked To: PETRO BIO, S. DE R.L. DE C.V.; Linked To: REFORESTACIONES CARELES, S. DE P.R. DE R.L.; Linked To: BARSAT, S.A. DE C.V.; Linked To: TAXI AEREO NACIONAL DE CULIACAN, S.A.).

5. ELENES LERMA, Maria Elizabeth (a.k.a. ELENES DE CARO, Elizabeth), San Gonzalo No. 1715, Colonia Santa Isabel, Zapopan, Jalisco C.P. 45110, Mexico; Carretera Isidro Mazatepec No. 500, Colonia San Agustin, Tlajomulco de Zuniga, Jalisco C.P. 45645, Mexico; DOB 12 Dec 1952; POB Badiraguato, Sinaloa, Mexico; alt. POB Culiacan, Sinaloa, Mexico; R.F.C. EELE521212B18 (Mexico); C.U.R.P. EELE521212MSLLRL01 (Mexico) (individual) [SDNTK] (Linked To: HACIENDA LAS LIMAS, S.A. DE C.V.; Linked To: TAXI AEREO NACIONAL DE CULIACAN, S.A.; Linked To: VILLAS DEL COLLI S.A. DE C.V.).

6. SOTO RUIZ, Juan Carlos, Calle Las Flores 117, Colonia Victor Hugo, Zapopan, Jalisco, Mexico; DOB 27 May 1978; POB Guadalajara, Jalisco, Mexico; C.U.R.P. SORJ780527HJCTZN06 (Mexico) (individual) [SDNTK] (Linked To: ARRENDADORA TURIN, S.A.; Linked To: DESARROLLOS BIO GAS, S.A. DE C.V.; Linked To: ECA ENERGETICOS, S.A. DE C.V.; Linked To: ENERGETICOS VAGO, S.A. DE C.V.; Linked To: INMOBILIARIA PROMINENTE, S.A. DE C.V.; Linked To: OPERADORA ENGO, S.C.; Linked To: NUEVA TERRA, S. DE R.L. DE C.V.; Linked To: PRONTO SHOES, S.A. DE C.V.; Linked To: SERVICIO Y OPERADORA SANTA ANA, S.A. DE C.V.).

Entities

1. ARRENDADORA TURIN, S.A., Jalisco, Mexico; Folio Mercantil No. 75413–1 (Mexico) [SDNTK].

2. BARSAT, S.A. DE C.V. (a.k.a. BARZAT), Lope de Vega No. 232, Arcos Vallarta,

Guadalajara, Jalisco 44130, Mexico; Folio Mercantil No. 23415–1 (Mexico) [SDNTK].

3. BLUE POINT SALT, S.A. DE C.V., A Las Rocas No. 244, Col. Prados Vallarta, Zapopan, Jalisco C.P. 45020, Mexico; Callejon del Sereno 4361, Zapopan, Jalisco C.P. 45110, Mexico; R.F.C. BPS050519NM6 (Mexico) [SDNTK].

4. DESARROLLADORA SAN FRANCISCO DEL RINCON, S.A. DE C. V., Guadalajara, Jalisco, Mexico; Folio Mercantil No. 27273–1 (Mexico) [SDNTK].

5. DESARROLLOS BIO GAS, S.A. DE C.V., Independencia Sur No. 185, Col. Analco, Guadalajara, Jalisco C.P. 44450, Mexico; R.F.C. DBG0805095P7 (Mexico) [SDNTK].

6. DINERMAS, S. DE R.L. DE C.V., Guadalajara, Jalisco, Mexico; Folio Mercantil No. 40037–1 (Mexico) [SDNTK].

7. ECA ENERGETICOS, S.A. DE C.V., Calle Adolfo B. Horn No. 1437, Col. Pueblo Toluquilla, Tlaquepaque, Jalisco C.P. 45610, Mexico; R.F.C. EEN0310271G7 (Mexico) [SDNTK].

8. EL BANO DE MARIA, S. DE R.L. DE C.V., Periferico Poniente No. 2100, Col. Ciudad Granja, Guadalajara, Jalisco C.P. 45010, Mexico; Santa Clara No. 88, Col. El Briseno, Zapopan, Jalisco C.P. 45236, Mexico; Av. Pablo Neruda casi esq. con Ruben Dario, Guadalajara, Jalisco, Mexico; Gran Plaza, Guadalajara, Jalisco, Mexico; Plaza del Sol, Guadalajara, Jalisco, Mexico; Plaza Patria, Guadalajara, Jalisco, Mexico; Plaza Mexico, Guadalajara, Jalisco, Mexico; Aeropuerto de Guadalajara, Jalisco, Mexico; Puerto Vallarta, Jalisco, Mexico; Mazatlan, Sinaloa, Mexico; Monterrey, Nuevo Leon, Mexico; Celaya, Guanajuato, Mexico; Tijuana, Baja California, Mexico; Los Cabos, Baja California Sur, Mexico; R.F.C. BMA040923MZ9 (Mexico) [SDNTK].

9. ENERGETICOS VAGO, S.A. DE C.V., Cuauhtemoc No. 252, Valle de San Sebastian, Tlajomulco de Zuniga, Jalisco 45650, Mexico; Folio Mercantil No. 29924–1 (Mexico) [SDNTK].

10. ESTACION DE SERVICIO ATEMAJAC, S.A. DE C.V., Calle Mar Baltico # 2240–408, Colonia Country Club, Guadalajara, Jalisco, Mexico; Folio Mercantil No. 58218–1 (Mexico) [SDNTK].

11. EVCOMER, S.A. DE C.V., Independencia Sur No. 185, Col. Analco, Guadalajara, Jalisco C.P. 44450, Mexico; R.F.C. EVC080410DE6 (Mexico) [SDNTK].

12. FORTANAS, S. DE R.L. DE C.V., Guadalajara, Jalisco, Mexico; Folio Mercantil No. 39751–1 (Mexico) [SDNTK].

13. GRUPO BARSATERRA S.A. DE C.V., Guadalajara, Jalisco, Mexico; Folio Mercantil No. 25296–1 (Mexico) [SDNTK].

14. GRUPO ESPANOL ELCAR, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Folio Mercantil No. 23416–1 (Mexico) [SDNTK].

15. HACIENDA LAS LIMAS, S.A. DE C.V., Carretera a Ciudad Guzman Km. 49, entre de crucero de Atoyac y crucero de Amacueca, Acatlan, Jalisco, Mexico; Callejon del Sereno #4361, Colonia Villa Universitaria, Zapopan, Jalisco, Mexico; R.F.C. HLI040211HK3 (Mexico) [SDNTK].

16. INMOBILIARIA PROMINENTE, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Folio Mercantil No. 12354–1 (Mexico) [SDNTK].

17. MINERALES NUEVA ERA, S.A. DE C.V. (a.k.a. DIATOMAG; a.k.a. DIATOMKILL), Calle San Antonio No. 70, Col. Las Fuentes, Zapopan, Jalisco CP 45070, Mexico; Vidrio No. 5, Col. el Camino, Tlaquepaque, Jalisco 45239, Mexico; Volcan Paricutin 6277, Col. El Colli Urbano, Zapopan, Jalisco, Mexico; Folio Mercantil No. 33093–1 (Mexico) [SDNTK].

18. MINERALES NUEVA GENERACION, S.A. DE C.V., Calle San Antonio No. 70, Col. Las Fuentes, Zapopan, Jalisco CP 45070, Mexico; R.F.C. MNG100714FR0 (Mexico); Folio Mercantil No. 56284–1 (Mexico) [SDNTK].

19. NUEVA TERRA, S. DE R.L. DE C.V., Lope de Vega No. 232, Arcos Vallarta, Guadalajara, Jalisco 44130, Mexico; Folio Mercantil No. 39815–1 (Mexico) [SDNTK].

20. OPERADORA ENGO, S.C., Comercio 172, Mexicaltzingo, Guadalajara, Jalisco C.P. 44180, Mexico; Liceo 793, Alcalde Barranquitas, Guadalajara, Jalisco C.P. 44280, Mexico; R.F.C. OEN060529P75 (Mexico) [SDNTK].

21. ORGANIC SALT, S.A. DE C.V., Callejon del Sereno No. 4361, Col. Jacarandas Zapopan 4, Zapopan, Jalisco C.P. 45110, Mexico; R.F.C. OSA030512AL3 (Mexico) [SDNTK].

22. PETRO BIO, S. DE R.L. DE C.V., Independencia Sur No. 185, Col. Analco, Guadalajara, Jalisco C.P. 44450, Mexico; R.F.C. PBI080509Q47 (Mexico) [SDNTK].

23. PETRO LONDON, S. DE R.L. DE C.V., Lazaro Cardenas No. 4094, Don Bosco Vallarta, Zapopan, Jalisco 45049, Mexico; Folio Mercantil No. 28057–1 (Mexico) [SDNTK].

24. PETRO MAS, S. DE R.L. DE C.V., Guadalajara, Jalisco, Mexico; Folio Mercantil No. 39818–1 (Mexico) [SDNTK].

25. PROMI FEL, S. DE R.L. DE C.V., Guadalajara, Jalisco, Mexico; Folio Mercantil No. 39805–1 (Mexico) [SDNTK].

26. PRONTO SHOES, S.A. DE C.V. (a.k.a. CX INSPIRA; a.k.a. CX MILAN GUADALAJARA; a.k.a. CX MODA; a.k.a. CX–SHOES), 16 de Septiembre 635, Casi Esq. la Paz, Guadalajara, Jalisco, Mexico; Av. Lafragua 2729, Esq. Paseo Jardin, Fracc. Moderno, Veracruz, Veracruz, Mexico; Comercio No. 172, Col. Mexicaltzingo, Guadalajara, Jalisco C.P. 44180, Mexico; Padre Mier 185, Col. Centro, Monterrey, Nuevo Leon C.P. 64000, Mexico; San Lorenzo 31 Entre Calzada la Ermita y Rueda Pastor, Col. 8va. Amplicacion Iztapalapa, Mexico, Distrito Federal, Mexico; Tecnologico 210, Esq. Cortador, Fracc. Industrial Julian de Obregon, Leon, Guanajuato C.P. 37290, Mexico; R.F.C. PSH081211I53 (Mexico) [SDNTK].

27. REFORESTACIONES CARELES, S. DE P.R. DE R.L., Callejon del Sereno No. 4361, Col. Fracc. Jardines Universidad, Zapopan, Jalisco C.P. 45110, Mexico; R.F.C. RCA050316ET5 (Mexico) [SDNTK].

28. SERVICIO Y OPERADORA SANTA ANA, S.A. DE C.V., Camino a Santa Ana Tepetitlan No. 316, Colonia Agricola, Zapopan, Jalisco C.P. 45200, Mexico; R.F.C. SOS050203E31 (Mexico); Folio Mercantil No. 25524–1 (Mexico) [SDNTK].

29. TAXI AEREO NACIONAL DE CULIACAN, S.A., Culiacan, Sinaloa, Mexico; R.F.C. TAN–780822–001 (Mexico) [SDNTK].

30. VILLAS DEL COLLI S.A. DE C.V., Guadalajara, Jalisco, Mexico; Folio Mercantil No. 3875–1 (Mexico) [SDNTK].

Dated: April 23, 2021.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–09066 Filed 4–29–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5498–SA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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. Currently, the IRS is soliciting comments concerning Form 5498–SA; HSA, Archer MSA, or Medicare Advantage MSA Information.

DATES: Written comments should be received on or before June 29, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202)317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* HSA, Archer MSA, or Medicare Advantage MSA Information.

OMB Number: 1545–1518.

Form Number: 5498–SA.

Abstract: This form is used to report contributions to a medical savings account as required by Internal Revenue Code section 220(h).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 9,167.

Estimated Time per Response: 10 min.

Estimated Total Annual Burden Hours: 1,559.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 26, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–09093 Filed 4–29–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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. The IRS is soliciting comments concerning Form 4506, Request for Copy of Tax Return.

DATES: Written comments should be received on or before June 29, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (202) 317–6009 or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Copy of Tax Return.

OMB Number: 1545–0429.

Form Number: Form 4506.

Abstract: Internal Revenue Code section 7513 allows taxpayers to request a copy of a tax return or related documents. Form 4506 is used for this purpose. The information provided will be used for research to locate the tax form and to ensure that the requestor is the taxpayer, or someone authorized by the taxpayer to obtain the documents requested.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms, and Federal, state, local, or tribal governments.

Estimated Number of Respondents: 325,000.

Estimated Time per Respondent: 48 min.

Estimated Total Annual Burden Hours: 260,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 13, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–09091 Filed 4–29–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Recruitment Notice for the Taxpayer Advocacy Panel; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice; Correction.

SUMMARY: The IRS published a document in the **Federal Register** of April 20, 2021, correcting a Recruitment Notice for their Taxpayer Advocacy Panel. The IRS has corrections for that document.

FOR FURTHER INFORMATION CONTACT: Lisa Billups at 214–413–6523 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 20, 2021, in FR Doc. 2021–08030, on page 2061, in the first column, correct the **SUMMARY** caption to read:

SUMMARY: In the **Federal Register** notice that was originally published on April 20, 2021, (Volume 86, Number 74, Page 20611) the state of Montana was not listed. Montana is being added to the TAP recruitment list. All other details remain unchanged.

Dated: April 26, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–09009 Filed 4–29–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before June 29, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. Please send comments for the information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, or copies of the information collection and instructions, or copies of any comments received, contact LaNita Van Dyke, at (202) 317–6009, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Procedural Rules for Excise Taxes Currently Reportable on Form 720.

OMB Number: 1545–1296.

Regulation Project Number: PS–27–91 and PS–8–96 (Final (T.D. 8442)).

Abstract: Internal Revenue Code section 6302(c) authorizes the use of Government depositaries for the receipt of taxes imposed under the internal revenue laws. These final regulations provide reporting and recordkeeping requirements related to return, payments, and deposits of tax for excise taxes currently reportable on Form 720. including special rules for use of Government depositaries under chapter 33 of the Internal Revenue Code. Existing procedural regulations under 26 CFR parts 43, 46, 48, 49, and 52 are amended and consolidated in a new part 40. These regulations also reflect changes to the law made by the Omnibus Budget Reconciliation Acts of 1989 and 1990. The regulations affect persons required to report liability for excise taxes currently reportable on Form 720.

Current Actions: There are no changes being made to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10,500.

Estimated Time per Respondent: 23 hours, 5 minutes.

Estimated Total Annual Burden: 242,350.

The following paragraph applies to the collection of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

The IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

Approved: April 26, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–09092 Filed 4–29–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Health Administration, Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is publishing SORN ''Veterans Tracking Application (VTA)—VA'' (163VA005Q3). The VTA is a joint Veterans Affairs (VA)/Department of Defense (DoD) application that supports the effective management and tracking of Veteran and Service member beneficiaries at all levels of the continuum of care. VTA tracks the Service member through the Integrated Disability Evaluation System (IDES) and monitors benefits applications and administrative details.

DATES: This modified system of records is effective November 19, 2020.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Veterans Tracking Application (VTA)—VA'' (163VA005Q3). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Delwin Johnson, Product Line Manager (VTA), Office of Information & Technology, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 367–4033 and *Delwin.Johnson2@va.gov.*

SUPPLEMENTARY INFORMATION: The Department is amending its system of records entitled ''Veterans Tracking Application (VTA)/Federal Case Management Tool (FCMT)'' (160VA005Q3) by removing FCMT, as VTA is now a standalone application. VTA now falls underneath the product line ''Eligibility and Enrollment (E&E)'' and the points of contact have been modified.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Dominic A. Cussatt, Acting Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on March 23, 2021 for publication.

Dated: April 27, 2021.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

''Veterans Tracking Application (VTA)—VA'' (163VA005Q3).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The VTA system containing its associated records is maintained at the Austin Information Technology Center (AITC) at 1615 East Woodward Street, Austin, Texas 78772. A second VTA database with an identical set of records is being established at a disaster recovery site at the Hines Information Technology Center (Hines ITC) at Hines, Illinois. All records are maintained electronically.

SYSTEM MANAGER(S):

Delwin Johnson, Product Line Manager (VTA), Office of Information & Technology, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 367–4033 and *Delwin.Johnson2@va.gov*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for maintaining this system is Title 38 U.S.C., 5106.

PURPOSE(S) OF THE SYSTEM:

VTA will work to replace manual processes that result in delays in coordinating or managing care for our Veterans. VTA and the associated database support programs throughout the VA. The VTA provides the VA tracking information on members of the armed forces who are receiving care from a DoD Military Treatment Facility (MTF), a VA health care facility, or who already have Veteran status. The VTA provides tracking of the Veteran/Service member's arrival at the initial VA health care facility and provides date and location information for subsequent transfers to other health facilities. In addition to the Veteran patient population, VTA records benefit tracking information for all severely injured Veterans requesting benefits. This history includes all benefit award details to include application dates, award decisions, dates and amounts. The purpose of the VTA is to track the initial arrival of a Service member into the VA and DoD health care systems and their subsequent movement among VA health facilities, as well as monitor benefits application and administration details.

The records and information may be used for analysis to produce various management, workload tracking, and follow-up reports for our Veterans; to track and evaluate the ordering and delivery of services and patient care; for the planning, distribution and utilization of resources; and to allocate clinical and administrative support to patient medical care.

In addition, the data may be used to assist in workload allocation for patient treatment services including provider panel management, nursing care, clinic appointments, surgery, prescription processing, diagnostic and therapeutic procedures; to plan and schedule training activities for employees; for audits, reviews and investigations conducted by the network directors office and VA Central Office; for quality assurance audits, reviews and investigations; for law enforcement investigations; and for personnel management, evaluation and employee ratings, and performance evaluations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The category of the individuals covered by the VTA database encompasses Veterans and Service members.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record, or information contained in the record, may include identifying information (*e.g.,* name, contact information, Social Security number), association to dependents, cross reference to other names used, military service participation and status information (branch of service, rank, enter on duty date, release from active duty date, military occupations, type of duty), reason and nature of active duty separation (completion of commitment, disability, hardship, etc.), combat/environmental exposures (combat pay, combat awards, theater location), combat deployments (period of deployment, location/country), Guard/Reserve activations (type of activation), military casualty/disabilities (line of duty death, physical examination board status, serious/very serious injury status, recovery plans, DoD rated disabilities), benefit participation, eligibility and usage, and VA compensation (rating, award amount).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by components of the Department of Defense and Department of Veterans Affairs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

HIPAA:

Note: To the extent that records contained in the system include individually identifiable health information protected by 45 CFR parts 160 and 164, that information may not be disclosed under a routine use unless there is also specific disclosure authority in 45 CFR parts 160 and 164.

38 U.S.C. 7332:

Note: To the extent that records contained in the system include individually-identifiable patient information protected by 38 U.S.C. 7332, that information cannot be disclosed under a routine use unless there is also specific disclosure authority in 38 U.S.C. 7332.

HIPAA & 38 U.S.C. 7332:

Note: To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information of VHA or any of its business associates, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific disclosure authority in both 38 U.S.C. 7332 and 45 CFR parts 160 and 164.

1. Congress: VA may disclose information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. Data Breach Response and Remediation, for VA: VA may disclose information to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records, (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal

Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm involving.

3. Data Breach Response and Remediation, for Another Federal Agency: VA may disclose information to another Federal agency or Federal entity, when VA determines that the information is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. Law Enforcement: VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701. If the disclosure is in response to a request from a law enforcement entity, the request must meet the requirements for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7).

5. DoJ for Litigation or Administrative Proceeding: VA may disclose information to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components,

is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings, provided, however, that in each case VA determines the disclosure is compatible with the purpose for which the records were collected. If the disclosure is in response to a subpoena, summons, investigative demand, or similar legal process, the request must meet the requirements for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7), or an order from a court of competent jurisdiction under 552a(b)(11).

6. Contractors: VA may disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. OPM: VA may disclose information to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. EEOC: VA may disclose information to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

8. FLRA: VA may disclose information to the Federal Labor Relations Authority (FLRA) in connection with: The investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections.

9. MSPB: VA may disclose information to the Merit Systems Protection Board (MSPB) and the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

10. NARA: VA may disclose information to NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are transmitted between approved VA and DoD office/systems and VTA over secure telecommunications (*i.e.* SFTP, secure web services) using approved encryption technologies. Records (or information contained in records) are maintained in electronic format in the VTA database. Information from VTA is disseminated in three ways: (1) Approved VA and DoD systems electronically request and receive data from VTA over the internal VA and DoD network; (2) data is provided over the secure telecommunications between VTA and approved VA and DoD office/systems for reconciliation of records; (3) periodic electronic data extracts of subsets of information contained in VTA are provided to approved VA and DoD offices/systems over the internal VA network and DoD network. Backups of VTA data are created regularly and stored in a secure off-site facility.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Electronic files are retrieved using various unique identifiers belonging to the individual to whom the information pertains to include such identifiers as name, claim file number, Social Security number and date of birth.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

VA retains selected information for purposes of making eligibility determinations for VA benefits. The information retained may be included in the VA records that are maintained and disposed of in accordance with the appropriate record disposition authority approved by the Archivist of the United States.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Physical Security: The primary VTA system is located in the AITC and the backup disaster recovery system is located in the Hines ITC. Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic passage technology. All other persons needing access to computer rooms are escorted.

2. System Security: Access to the VA network is protected by the usage of ''PIV''. Once on the VA network, separate ID and password credentials are required to gain access to the VTA server and/or database. Access to the server and/or database is granted to only

a limited number of system administrators and database administrators. In addition, VTA has undergone certification and accreditation. Users of VTA access the system via AccessVA. Users must also register through VTA and obtain a VTA Account. Within the VTA system, users are designated a role which determines their access to specific data. Based on a risk assessment that followed National Institute of Standards and Technology Vulnerability and Threat Guidelines, the system is considered stable and operational. VTA has received a final Authority to Operate (ATO). The system was found to be operationally secure, with very few exceptions or recommendations for change.

RECORD ACCESS PROCEDURES:

(See notification procedure below.)

CONTESTING RECORD PROCEDURES:

(See notification procedure below.)

NOTIFICATION PROCEDURES:

Individuals seeking information on the existence and content of a record pertaining to them should contact the system manager, in writing, at the above address. Requests should contain the full name, address and telephone number of the individual making the inquiry.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Not Applicable.

HISTORY:

This SORN was originally published in the **Federal Register** on April 19, 2012, 77 FR 23543. The SORN was subsequently amended in the **Federal Register** on April 15, 2014, 79 FR 21352.

[FR Doc. 2021–09084 Filed 4–29–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Health Administration, Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled, ''Ionizing Radiation Registry-VA'' (69VA131). VA is amending the system of records by revising the System Number; System Location; System Manager; Authority for Maintenance of the System; Routine Uses of Records Maintained in the System; Policies and Practices for Storage of Records; Policies and Practices for Retention and Disposal of Records; Physical, Procedural and Administrative Safeguards; Record Access Procedures; and Notification Procedure. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than June 1, 2021. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the modified system will become effective June 1, 2021. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Ionizing Radiation Registry-VA (69VA131)''. Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492 (Note: not a toll-free number).

SUPPLEMENTARY INFORMATION: The System Number will be changed from 69VA131 to 69VA10 to reflect the current VHA organizational routing symbol.

The System Location is being updated to replace Austin Automation Center (AAC) with Austin Information Technology Center (AITC). Environmental Agents Service (131) is being replaced with Post Deployment Health Services (10P4Q). Also, since optic readers, paper, or disk copies are no longer used or maintained, this section is being updated to remove, ''The secure web-based data entry system is maintained by the AAC and provides retrievable images to users. The optical disk system is currently being utilized where there is no access to the secure web-based system. However, the optical disk system is scheduled to be discontinued in 2004 and all access to the Ionizing Radiation Registry (IRR) system will be through the secure web-based data entry system.''

The System Manager, Record Access Procedures, and Notification Procedure are being updated to replace, ''Program Chief for Clinical Matters, Office of Public Health and Environmental Hazards (13) (for clinical issues) and Management/Program Analyst, Environmental Agents Service (131) (for administrative issues)'' with Deputy Chief Consultant, Post Deployment Health Services (10P4Q). Telephone number (202) 266–4511 (Note: this is not a toll-free number).

Authority for Maintenance of the System is being amended to include Title 38, United States Code 527, 1116, Public Law 102–585 Section 703, and Public Law 100–687.

The Routine Uses of Records Maintained in the System is being updated to replace Joint Commission for Accreditation of Healthcare Organizations (JCAHO) to The Joint Commission in Routine use #10.

The language in Routine Use #11 is being amended which states that disclosure of the records to the U.S. Department of Justice (DoJ) is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. This routine use will now state that VA may disclose information to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components,

is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings, provided, however, that in each case VA determines the disclosure is compatible with the purpose for which the records were collected. If the disclosure is in response to a subpoena, summons, investigative demand, or similar legal process, the request must meet the requirements for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7), or an

order from a court of competent jurisdiction under 552a(b)(11).

Routine Use #13 has been updated by clarifying the language to state, ''VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

Routine use #14 is being added to state, ''VA may disclose information from this system of records to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.''

Policies and Practices for Storage of Records is updated to remove ''In 2003, the data collection process moved to a secure web-based system. Data previously recorded manually and converted to electronic format is now input through the secure VA Intranet system. Data is stored on a web server hosted by the AAC and is retrievable by the facility. Three levels of access are provided for the data that is input, using password security linked to the AAC Top Secret Security system, with mandated changes every 90 days. Data from individual facilities is uploaded nightly and stored on Direct Access Storage Devices at the AAC, Austin, Texas, and on optical disks at VA Central Office, Washington, DC. AAC stores registry tapes for disaster back up at an off-site location. VA Central Office also has back-up optical disks stored off-site. In addition to electronic data, registry reports are maintained on paper documents and microfiche. The optical disk system is currently being utilized where there is no access to the secure web- based system. The optical disk system is scheduled to be discontinued in 2004 and all access to the IRR system will be through the secure web-based data entry system. Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.'' This section is updated to state that all registry data is stored electronically in the registry database.

Policies and Practices for Retention and Disposal of Records is being updated to remove Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States. This section is updated to state that currently these records are maintained as a permanent record, pending approval of a new records schedule by the National Archives and Records Administration (NARA). These permanent records will transfer to NARA in 5-year blocks, until scheduled.

The Physical, Procedural and Administrative Safeguards section is being updated to remove, ''Data is securely located behind the VA firewall and only accessible from the VA Local Area Network (LAN) through the VA Intranet. Read access to the data is granted through a telecommunications network to authorized VA Central Office personnel. AAC reports are also accessible through a telecommunications network on a read-only basis to the owner (VA facility) of the data. Access is limited to authorized employees by individually unique access codes which are changed periodically. Physical access to the AAC is generally restricted to AAC staff, VA Central Office, custodial personnel, Federal Protective Service and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted. Backup records stored off-site for both the AAC and VA Central Office are safeguarded in secured storage areas. A disaster recovery plan is in place and system recovery is tested at an off-site facility in accordance with established schedules. This section is updated to state that there are multiple levels of security to ensure the confidentiality of all data stored within the IRR. The registry is stored on a password protected system located in a locked room. Registry application is web-based and accessible behind the VA firewall. Access to the facility is limited by Personal Identity Verification (PIV) access, security card, metal scanners at the entrance, and security guards.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Dominic A. Cussatt, Acting Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on March 26, 2021 for publication.

Dated: April 27, 2021.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME:

Ionizing Radiation Registry-VA (69VA10).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Character-based data from Ionizing Radiation Code Sheets are maintained in a registry data set at the Austin Information Technology Center (AITC), 1615 Woodward Street, Austin, Texas 78772. Since the data set at the AITC is not all-inclusive, *i.e.,* narratives, signatures, etc., noted on the code sheets are not entered into this system, images of the code sheets are maintained at the Department of Veterans Affairs, Post Deployment Health Services (10P4Q), 810 Vermont Avenue NW, Washington, DC 20420. These are electronic images of paper records, *i.e.,* code sheets, medical records, questionnaires and correspondence.

SYSTEM MANAGER(S):

Deputy Chief Consultant, Post Deployment Health Services (10P4Q). VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420. Telephone number (202) 266–4511 (Note: this is not a toll-free number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code (U.S.C.) 527, 1116, 1710(e)(1)(B) and 1720E, Public Law 102–585 Section 703, and Public Law 100–687.

PURPOSE(S) OF THE SYSTEM:

The records will be used for the purpose of providing information about Veterans who have had an IRR examination at a VA facility; assisting in generating hypotheses for research studies; providing management with the capability to track patient demographics, and radiogenic related diseases; and planning and delivery of health care services and associated costs. The records are used to assist in generating hypotheses for research studies. Because of the self-selected nature of the registry participants, *i.e.,* the individuals decide themselves to be part of the registry rather than being ''chosen'' in a scientific manner, this group cannot be used for scientific research. However, the IRR may assist researchers by providing clues or suggestions of specific health problems that then form the basis for the design and conduct of specific scientific studies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans who may have been exposed to ionizing radiation while on active military duty and have had an IRR examination at a VA medical facility under conditions described in Title 38 United States Code (U.S.C.) 1710(e)(1)(B) and 1720E. These conditions include:

1. On-site participation in a test involving the atmospheric detonation of a nuclear device at a nuclear device testing site-the Pacific Island, *e.g.,* Bikini, New Mexico, Nevada, etc. (whether or not the testing nation was the United States);

2. Participation in the occupation of Hiroshima or Nagasaki, Japan, from August 6, 1945, through July 1, 1946;

(a) Internment as a prisoner of war (POW) in Japan during World War II which the Secretary of VA determines resulted in an opportunity for exposure to ionizing radiation comparable to that of Veterans involved in the occupation of Hiroshima or Nagasaki, Japan;

3. Treatment with nasopharyngeal (NP) radium irradiation while in the active military, naval or air service; and

4. Participated in radiation-risk activities at the:

(a) Department of Energy gaseous diffusion plants at Paducah, KY, Portsmouth, OH, or K25 area at Oak Ridge, TN, for at least 250 days before February 1, 1992;

(b) Underground nuclear tests at Amchitka Island, AK, before January 1, 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of code sheet records containing VA facility code identifier where the Veteran was examined or treated; Veteran's name; address; Social Security number; military service serial number; claim number; date of birth; telephone number; sex; report of birth defects among Veteran's children or grandchildren; dates of medical examinations; consultations; radiogenic related diseases; and name and signature of examiner/physician coordinator.

In addition, there may be medical records with information relating to the examination and/or treatment, including laboratory findings on vision, hearing, blood tests, electrocardiograms, chest x-rays, urinalysis, laboratory report displays, medical certificates to support diagnosis; progress notes; military unit assignments; questionnaires; correspondence relating to Veteran's exposure history; personal history, *e.g.,* education, marital status, occupational history, family history, complaints/symptoms; personal medical history, habits, recreation, reproductive and family history, physical measurements; military discharge records; and VA claims for compensation.

RECORD SOURCE CATEGORIES:

VA patient medical records, various automated record systems providing clinical and managerial support to VA health care facilities, Veteran, family members, and records from Veterans Benefits Administration, Department of Defense, Department of the Army, Department of the Air Force, Department of the Navy and other Federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually-identifiable health information, and 38 U.S.C. 7332; *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of, and at the written request of, that individual.

2. VA may disclose information relevant to a claim of a veteran or beneficiary, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information, and military service and active duty separation information, only at the request of the claimant to accredited service organizations, VA-approved claim agents, and attorneys acting under a declaration of representation, so that these individuals can aid claimants in the preparation, presentation, and prosecution of claims under the laws administered by VA.

3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances:

(a) To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and

(b) To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a standing written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

4. Disclosure may be made to NARA in records management inspections conducted under authority of Title 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

5. VA may disclose information from this system to epidemiological and other research facilities approved by the Under Secretary for Health for research purposes determined to be necessary and proper, provided that the names and addresses of veterans and their dependents will not be disclosed unless those names and addresses are first provided to VA by the facilities making the request.

6. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel or the Armed Services and/or their dependents may be disclosed

(a) To a Federal department or agency or

(b) Directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to insure the appropriateness of the disclosure to the contractor.

7. Any information in this system may be disclosed to a Federal grand jury, a Federal court or a party in litigation, or a Federal agency or party to an administrative proceeding being conducted by a Federal agency, in order for VA to respond to and comply with the issuance of a Federal subpoena.

8. Any information in this system may be disclosed to a state or municipal grand jury, a state or municipal court or a party in a litigation, or to a state or municipal administrative agency functioning in a quasi-judicial capacity or a party to a proceeding being conducted by such agency, in order for VA to respond to and comply with the issuance of a state or municipal subpoena; provided, that any disclosure or claimant information made under this routine use must comply with the provisions of 38 CFR 1.511.

9. VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701. If the disclosure is in response to a request from a law enforcement entity, the request must meet the requirements for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7).

10. VA may disclose information to survey teams of the Joint Commission on Accreditation of Healthcare Organizations, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with which VA has a contract or agreement to conduct such reviews, as relevant and necessary for the purpose of program review or the seeking of accreditation or certification.

11. VA may disclose information to the DoJ, or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(e) VA or any component thereof;

(f) Any VA employee in his or her official capacity;

(g) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or

(h) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings, provided, however, that in each case VA determines the disclosure is compatible with the purpose for which the records were collected. If the disclosure is in response to a subpoena, summons, investigative demand, or similar legal process, the request must meet the requirements for a qualifying law enforcement request under the Privacy Act, 5 U.S.C. 552a(b)(7), or an order from a court of competent jurisdiction under 552a(b)(11).

12. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

13. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

14. VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

All registry data is stored electronically in the registry database.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Documents are retrieved by name of Veteran, Social Security number and service serial number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Currently these records are maintained as a permanent record, pending approval of a new records schedule by NARA. These permanent records will transfer to NARA in 5-year blocks, until scheduled.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to electronic and paper records at VA Central Office is only authorized to VA personnel on a ''need to know'' basis. Records are maintained in manned rooms during working hours. During non-working hours, there is limited access to the building with visitor control by security personnel. Registry data maintained at the AITC can only be updated by authorized AITC personnel.

There are multiple levels of security to ensure the confidentiality of all data stored within the IRR. The registry is stored on a password protected system located in a locked room. Registry application is web-based and accessible behind the VA firewall. Access to the facility is limited by Personal Identity Verification (PIV) access, security card, metal scanners at the entrance, and security guards.

RECORD ACCESS PROCEDURE:

An individual who seeks access to records maintained under his or her name may write or visit the nearest VA facility or write to the Deputy Chief Consultant, Post Deployment Health Services (10P4Q), VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where medical care was provided or submit a written request to the Deputy Chief Consultant, Post Deployment

Health Services (10P4Q), VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420. Inquiries should include the Veteran's name, Social Security number, service serial number, and return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 68 FR 75028.

[FR Doc. 2021–09069 Filed 4–29–21; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Parts 51, 52, 78, et al.
Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 78, and 97

[EPA–HQ–OAR–2020–0272; FRL–10021–34–OAR]

RIN 2060–AU84

Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking this action to address interstate transport of ozone pollution under the ''good neighbor provision'' of the Clean Air Act (CAA). This final action is taken in response to the United States Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) remand of the Cross-State Air Pollution Rule (CSAPR) Update in *Wisconsin* v. *EPA* on September 13, 2019. The CSAPR Update finalized Federal Implementation Plans (FIPs) for 22 states to address their good neighbor obligations for the 2008 ozone National Ambient Air Quality Standards (NAAQS). The D.C. Circuit found that the CSAPR Update, which was published on October 26, 2016 as a partial remedy to address upwind states' obligations prior to the 2018 Moderate area attainment date under the 2008 ozone NAAQS, was unlawful to the extent it allowed those states to continue their significant contributions to downwind ozone problems beyond the statutory dates by which downwind states must demonstrate their attainment of the air quality standards. On the same grounds, the D.C. Circuit also vacated the CSAPR Close-Out in *New York* v. *EPA* on October 1, 2019. This final rule resolves 21 states' outstanding interstate ozone transport obligations with respect to the 2008 ozone NAAQS.

This action finds that for 9 of the 21 states for which the CSAPR Update was found to be only a partial remedy (Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin), their projected ozone precursor emissions in the 2021 ozone season and thereafter do not significantly contribute to a continuing downwind nonattainment and/or maintenance problem, and therefore the states' CSAPR Update FIPs (or the SIPs subsequently approved to replace certain states' CSAPR Update FIPs) fully address their interstate ozone transport obligations with respect to the 2008 ozone NAAQS. This action also finds that for the 12 remaining states (Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia), their projected 2021 ozone season nitrogen oxides (NO_X) emissions significantly contribute to downwind states' nonattainment and/or maintenance problems for the 2008 ozone NAAQS. In this final action, EPA is issuing new or amended FIPs for these 12 states to replace their existing CSAPR NO_X Ozone Season Group 2 emissions budgets for electricity generating units (EGUs) with revised budgets via a new CSAPR NO_X Ozone Season Group 3 Trading Program. EPA is requiring implementation of the revised emission budgets beginning with the 2021 ozone season. Based on EPA's assessment of remaining air quality issues and additional emission control strategies for EGUs and other emissions sources in other industry sectors (non-EGUs), EPA is further determining that these NO_X emission reductions fully eliminate these states' significant contributions to downwind air quality problems for the 2008 ozone NAAQS. In this action, EPA is also finalizing an error correction of its June 2018 approval of Kentucky's good neighbor SIP.

DATES: This final rule is effective on June 29, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2020–0272. 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 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 electronically through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Hooper, Clean Air Markets Division, Office of Atmospheric Programs (Mail Code 6204M), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 343–9167; email address: *Hooper.Daniel@epa.gov*.

SUPPLEMENTARY INFORMATION:

Preamble Glossary of Terms and Abbreviations

The following are abbreviations of terms used in the preamble.

4-step good neighbor framework 4-step framework
AEO Annual Energy Outlook
AQAT Air Quality Assessment Tool
AQM TSD Air Quality Modeling Technical Support Document
CAA or Act Clean Air Act
CAIR Clean Air Interstate Rule
CAMx Comprehensive Air Quality Model with Extensions
CBI Confidential Business Information
CEMS Continuous Emission Monitoring System(s)
CFR Code of Federal Regulations
CMDb Control Measures Database
CMV Commercial Marine Vehicle
CoST Control Strategy Tool
CRA Congressional Review Act
CSAPR Cross-State Air Pollution Rule
EGU Electric Generating Unit
EISA Energy Independence and Security Act
EPA U.S. Environmental Protection Agency
FIP Federal Implementation Plan
FR Federal Register
HDGHG Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles
IC Internal Combustion
ICI Industrial, Commercial, and Institutional
ICR Information Collection Request
IPM Integrated Planning Model
iSIP Infrastructure State Implementation Plan
km Kilometer
lb/mmBtu Pounds per Million British Thermal Units
LEC Low Emission Combustion
LNB Low-NO_X Burners
MJO Multi-Jurisdictional Organizations
mmBtu Million British Thermal Units
MOVES Motor Vehicle Emission Simulator
MSAT2 Mobile Source Air Toxic Rule
NAAQS National Ambient Air Quality Standard
NEI National Emission Inventory
NESHAP National Emission Standards for Hazardous Air Pollutants
NO_X Nitrogen Oxides
NODA Notice of Data Availability
Non-EGU Non-electric Generating Unit
NSPS New Source Performance Standard
NUSA New Unit Set-Aside
OSAT/APCA Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis
OMB Office of Management and Budget
OTC Ozone Transport Commission
OTR Ozone Transport Region
PEMS Predictive Emissions Monitoring System
$PM_{2.5}$ Fine Particulate Matter
ppb Parts Per Billion
RACT Reasonably Available Control Technology
RIA Regulatory Impact Analysis
RICE Reciprocating Internal Combustion Engines
RRF Relative Response Factor
RTC Document Response to Comment Document
SCR Selective Catalytic Reduction
SIP State Implementation Plan
SMOKE Sparse Matrix Operator Kernel Emissions
SNCR Selective Non-catalytic Reduction

SO_2 Sulfur Dioxide
TIP Tribal Implementation Plan
TSD Technical Support Document
tpy Ton Per Year
ULNB Ultra-low NO_X Burner
VOC Volatile Organic Compound
WRF Weather Research and Forecasting Model

Table of Contents

I. Executive Summary

This final rule resolves the interstate transport obligations of 21 states under the good neighbor provision of the Clean Air Act (CAA or the Act), CAA section 110(a)(2)(D)(i)(I), for the 2008 ozone National Ambient Air Quality Standards (NAAQS). The 2008 ozone NAAQS is an 8-hour standard that was set at 75 parts per billion (ppb).[1] The U.S. Environmental Protection Agency (EPA or the Agency) published the Cross-State Air Pollution Rule (CSAPR) Update on October 26, 2016, which, among other things, partially addressed the interstate transport of emissions from 21 states with respect to the 2008 ozone NAAQS.[2] *See* 81 FR 74504. On December 21, 2018, EPA published the CSAPR Close-Out Rule, which found that the CSAPR Update was a complete remedy for 20 of those states based on air quality analysis of the year 2023.[3]

On September 13, 2019, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded the CSAPR Update, concluding that it was invalid in one respect because it unlawfully allowed upwind states to continue their significant contributions to downwind air quality problems beyond the statutory dates by which downwind States must demonstrate their attainment of ozone air quality standards. *Wisconsin* v. *EPA,* 938 F.3d 303, 318–20 (D.C. Cir. 2019) (*Wisconsin*) (per curiam); *see also id.* 336–37 (concluding that remand without vacatur was appropriate). Subsequently, on October 1, 2019, in a judgment order, the D.C. Circuit vacated the CSAPR Close-Out on the same grounds on which it had remanded without vacatur the CSAPR Update in *Wisconsin. New York* v. *EPA,* 781 Fed. App'x 4, 7 (D.C. Cir. 2019) (*New York*). The court found the CSAPR Close-Out inconsistent with the *Wisconsin* holding because the rule analyzed the year 2023 rather than 2021 and failed to demonstrate that it was an impossibility to address significant contribution by the 2021 Serious area attainment date (''the next applicable attainment date''). To address the *Wisconsin* and *New York* decisions, EPA proposed this rule in the **Federal**

[1] *See* 73 FR 16436 (March 27, 2008).

[2] In the CSAPR Update, EPA found that the finalized Tennessee emission budget fully addressed Tennessee's good neighbor obligation with respect to the 2008 ozone NAAQS. *See* 81 FR 74504, 74508 n. 19 (Oct. 26, 2016).

[3] *See* 83 FR 65878 (Dec. 21, 2018).

Register on October 30, 2020 to revise the CSAPR Update (85 FR 68964).[4]

In this final rule, in accordance with *Wisconsin* and *New York,* EPA has aligned its analysis and the implementation of emission reductions required to address significant contribution with the 2021 ozone season, which corresponds to the July 20, 2021 Serious area attainment date for the 2008 ozone NAAQS. EPA has further determined which emission reductions are impossible to achieve by the 2021 attainment date and whether any such additional emission reductions should be required beyond that date. *See Wisconsin,* 938 F.3d at 320; *New York,* 781 Fed. App'x at 7.

In this action on remand, EPA is not reopening any determinations, findings, or statutory or regulatory interpretations that are not required to address the *Wisconsin* remand, unless the Agency has explicitly so stated. This final action addressing the remand of the CSAPR Update in *Wisconsin* also has the effect of addressing the outstanding obligations that resulted from the D.C. Circuit's vacatur of the CSAPR Close-Out in *New York. See New York,* 781 Fed. App'x at 7.

A. Purpose of the Regulatory Action

The purpose of this rulemaking is to protect public health and welfare by eliminating emissions in certain upwind states that significantly contribute to nonattainment, or interfere with maintenance, of the 2008 ozone NAAQS in the U.S. Ground-level ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. Ozone exposure can also negatively impact ecosystems, for example, by limiting tree growth. Studies have established that ozone transport occurs on a regional scale (*i.e.,* hundreds of miles) over much of the eastern U.S., with elevated concentrations occurring in rural as well as metropolitan areas.[5] [6] As discussed in more detail in section IV.A.1, assessments of ozone control approaches have concluded that nitrogen oxides (NO_X) control strategies are effective to reduce regional-scale ozone transport.[7]

Clean Air Act section 110(a)(2)(D)(i)(I), which is also known as the ''good neighbor provision,'' requires states to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance in any other state with respect to any primary or secondary NAAQS.[8] The statute vests states with the primary responsibility to address this ''interstate transport'' of air pollutants through the development of good neighbor State Implementation Plans (SIPs), which are one component of larger SIP submittals typically required three years after EPA promulgates a new or revised NAAQS. These larger SIPs are often referred to as ''infrastructure'' SIPs or iSIPs. *See* CAA section 110(a)(1) and (2). EPA supports state efforts to submit good neighbor SIPs for the 2008 ozone NAAQS and has shared information with states to facilitate such SIP submittals. However, the CAA also requires EPA to fill a backstop role by issuing Federal Implementation Plans (FIPs) where states fail to submit good neighbor SIPs or EPA disapproves a submitted good neighbor SIP. *See generally* CAA section 110(k) and 110(c).

On October 26, 2016, EPA published the CSAPR Update, which finalized FIPs for 22 states that EPA found failed to submit a complete good neighbor SIP (15 states) [9] or for which EPA issued a final rule disapproving their good neighbor SIP (7 states).[10] The FIPs promulgated for these states included new NO_X ozone season emission budgets for electric generating units (EGUs) to reduce interstate transport for the 2008 ozone NAAQS. These emission budgets took effect in 2017 in order to assist downwind states with attainment of the 2008 ozone NAAQS by the 2018 Moderate area attainment date. EPA acknowledged at the time that the FIPs promulgated for 21 of the 22 states only partially addressed good neighbor obligations under the 2008 ozone NAAQS. The 22 states for which EPA promulgated FIPs to reduce interstate ozone transport as to the 2008 ozone NAAQS are listed in Table I.A–1.

TABLE I.A–1—LIST OF 22 COVERED STATES FOR THE 2008 8-HOUR OZONE NAAQS IN THE CSAPR UPDATE

State
Alabama
Arkansas
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maryland
Michigan
Mississippi
Missouri
New Jersey
New York
Ohio
Oklahoma
Pennsylvania
Tennessee
Texas
Virginia
West Virginia
Wisconsin

In response to the D.C. Circuit's remand of the CSAPR Update in *Wisconsin* and the court's vacatur of the CSAPR Close-Out in *New York,* this rule finds that 12 of the 22 states listed in Table I.A–1 require further ozone season NO_X emission reductions to address the good neighbor provision as to the 2008 ozone NAAQS. As such, EPA is promulgating new or revised FIPs for these states that include new EGU NO_X ozone season emission budgets, with implementation of these emission budgets beginning with the 2021 ozone season.[11] The 12 states for which EPA is promulgating new or revised FIPs to reduce interstate ozone transport as to the 2008 ozone NAAQS in this rulemaking are listed in Table I.A–2.

TABLE I.A–2—LIST OF 12 COVERED STATES FOR THE 2008 8-HOUR OZONE NAAQS

State
Illinois
Indiana
Kentucky
Louisiana
Maryland
Michigan

[4] On July 28, 2020, the U.S. District Court for the Southern District of New York issued a decision establishing a deadline of March 15, 2021, for EPA to issue a final rule fully resolving good neighbor obligations under the 2008 ozone NAAQS for seven upwind states. *New Jersey* v. *Wheeler,* No. 1:20–cv–01425 (S.D.N.Y. July 28, 2020).

[5] Bergin, M.S. et. al. (2007) Regional air quality: Local and interstate impacts of NO_X and SO_2 emissions on ozone and fine particulate matter in the eastern United States. Environmental Sci & Tech. 41: 4677–4689.

[6] Liao, K. et. al. (2013) Impacts of interstate transport of pollutants on high ozone events over the Mid-Atlantic United States. Atmospheric Environment 84, 100–112.

[7] *See also* 82 FR 51238, 51248 (Nov. 3, 2017) (citing 76 FR 48208, 48222 (Aug. 8, 2011)) and 63 FR 57381 (Oct. 27, 1998).

[8] 42 U.S.C. 7410(a)(2)(D)(i)(I).

[9] Alabama, Arkansas, Illinois, Iowa, Kansas, Maryland, Michigan, Mississippi, Missouri, New Jersey, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia.

[10] Indiana, Kentucky, Louisiana, New York, Ohio, Texas, and Wisconsin.

[11] As discussed in section IV.C.2.c., in 2018 EPA approved a SIP revision for Indiana replacing the state's CSAPR Update FIP with equivalent state regulations. This SIP revision, like the CSAPR Update FIP it replaced, was partial in nature. EPA is issuing a new FIP rather than a revised FIP for Indiana in this action.

TABLE I.A–2—LIST OF 12 COVERED STATES FOR THE 2008 8-HOUR OZONE NAAQS—Continued

State
New Jersey
New York
Ohio
Pennsylvania
Virginia
West Virginia

The enhanced control stringency represented by the new EGU NOx ozone season emission budgets for these states will take effect 60 days after publication in the **Federal Register**, which corresponds to the effective date of the rule as a whole.[12] This date will fall before the July 20, 2021, Serious area attainment date for the 2008 ozone NAAQS. EPA has determined that it is feasible for the EGUs subject to this rule to comply with the enhanced stringency of the budgets and that there is sufficient time before the effective date to prepare to meet these budgets by either undertaking the emission control measures EPA has identified in this action, or by taking advantage of compliance flexibilities available through the new interstate emissions trading program EPA is establishing.[13] As explained in greater detail below, due to timing considerations, one aspect of EPA's selected EGU control stringency—installation of state-of-the-art combustion controls—will not take effect until the 2022 ozone season, and this is accounted for in EPA's budget-setting process.

EPA is further adjusting these states' emission budgets for each ozone season from 2022 to 2024 to incentivize ongoing operation of identified emission controls to address significant contribution, until such time that air quality projections demonstrate resolution of the downwind nonattainment and/or maintenance problems for the 2008 ozone NAAQS. No further budget adjustments will be made after that time (*i.e.,* after the 2024 ozone season). EPA is implementing the new state-level ozone season emission budgets through a new CSAPR NO_X Ozone Season Group 3 Trading Program. Based on EPA's assessment of remaining air quality issues and additional emission controls, EPA is further determining that these NO_X emission reductions fully eliminate these states' significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states.

As discussed in more detail in section IV.C.2.b below, for one state, Kentucky, EPA is making an error correction under CAA section 110(k)(6) of its June 2018 approval of the Commonwealth's SIP, which had concluded that the CSAPR Update was a complete remedy based on modeling of the 2023 analytic year. EPA finds that the basis for that conclusion was invalidated by the decisions in *Wisconsin* and *New York.* With finalization of this error correction and disapproval of Kentucky's SIP, Kentucky's good neighbor obligations are outstanding. In light of the *Wisconsin* remand of Kentucky's FIP and EPA's error correction, the Agency has the necessary authority to amend the CSAPR Update FIP for Kentucky.

For the nine remaining states with FIPs promulgated under the CSAPR Update that EPA previously found partially addressed good neighbor obligations for the 2008 ozone NAAQS (Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin), EPA's updated air quality and contributions analysis shows that these states are not linked to any downwind air quality problems in 2021.[14] Therefore, EPA finds that the existing CSAPR Update FIPs (or the SIP revisions later approved to replace the CSAPR Update FIPs) for these states satisfy their good neighbor obligations for the 2008 ozone NAAQS.[15] Consequently, EPA is not requiring additional emission reductions from sources in these states in this final rule.

B. Summary of the Major Provisions of the Regulatory Action

To reduce interstate ozone transport under the authority provided in CAA section 110(a)(2)(D)(i)(I), this rule further limits ozone season (May 1 through September 30) NO_X emissions from EGUs in 12 states using the same framework EPA used in the CSAPR and other good neighbor rules (the 4-step good neighbor framework or 4-step framework). The 4-step good neighbor framework provides a process to address the requirements of the good neighbor provision for ground-level ozone NAAQS: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) determining which upwind states contribute to these identified problems in amounts sufficient to ''link'' them to the downwind air quality problems (*i.e.,* here, a contribution threshold equal to or greater than 1 percent of the NAAQS); (3) for states linked to downwind air quality problems, identifying upwind emissions that significantly contribute to downwind nonattainment or interfere with downwind maintenance of the NAAQS; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implementing the necessary emission reductions through enforceable measures. In this final rule, EPA applies this 4-step framework to respond to the D.C. Circuit's remand in *Wisconsin* and to revise the CSAPR Update with respect to the 2008 ozone NAAQS.

In order to apply the first step of the 4-step framework to the 2008 ozone NAAQS, EPA performed air quality modeling coupled with ambient measurements in an interpolation technique to project ozone concentrations at air quality monitoring sites in 2021.[16] (''Interpolation'' is a

[12] As discussed in section VII.C.4.a, EPA is ensuring that the enhanced control stringency represented by the new budgets will not take effect until the rule's effective date by issuing supplemental allowances for the portion of the 2021 ozone season occurring before the rule's effective date.

[13] In general, throughout this notice, where EPA refers to ''addressing good neighbor obligations,'' ''implementing reductions,'' or ''compliance feasibility'' by or in the 2021 ozone season (or similar formulations), this does not refer to the beginning of the ozone season on May 1, but rather to the effective date of this action, which is when the enhanced control stringency represented by the new EGU NOx ozone season emission budgets will take effect.

[14] EPA's use of a contribution threshold to determine, without further analysis of potential emission reduction opportunities, that certain states have no remaining good neighbor obligations with respect to a given NAAQS is part of the analytic approach that was followed in the CSAPR rulemaking and upheld by the Supreme Court. *See EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 521–22 (2014).

[15] As discussed in section IV.C.2.c., in 2017 and 2019 EPA approved SIP revisions for Alabama and Missouri replacing the states' CSAPR Update FIPs with equivalent state regulations. These SIP revisions, like the CSAPR Update FIPs they replaced, were partial in nature. EPA is therefore determining in this action that the states' existing SIP provisions satisfy these states' good neighbor obligations for the 2008 ozone NAAQS.

[16] The next relevant attainment date for the 2008 ozone NAAQS is July 20, 2021, for Serious nonattainment areas. 80 FR 12264, 12268; 40 CFR 51.1103. As discussed in section V, historically, EPA has considered the full ozone season prior to the attainment as supplying an appropriate analytic year for assessing good neighbor obligations. While this would be 2020 for a July 2021 attainment date (which falls within the 2021 ozone season running from May 1 to September 30), in this circumstance, because the 2020 ozone season is wholly in the past, it is appropriate to focus on 2021 in order to address good neighbor obligations to the extent possible by the 2021 attainment date. It would not be appropriate to select an analytical year that is wholly in the past, because the agency interprets the good neighbor provision as forward looking. *See* 85 FR at 68981; *see also Wisconsin,* 938 F.3d at 322. Consequently, in this action EPA uses the analytic year 2021.

numerical method for constructing new data points within the range of a discrete set of known data points, in this case the known data are the 2016 measured-based and 2023 modeling-based ozone concentrations.) EPA evaluated 2021 projected ozone concentrations at individual monitoring sites and considered current ozone monitoring data at these sites to identify receptors that are anticipated to have problems attaining or maintaining the 2008 ozone NAAQS. Such monitoring sites are referred to as nonattainment and/or maintenance receptors. Based on EPA's analysis, the Agency identified four nonattainment and/or maintenance receptors in 2021 (*i.e.,* three receptors in Connecticut and one in Texas). EPA received comments on its approach to identify nonattainment and/or maintenance receptors in 2021. A summary of these comments, as well as EPA's responses, can be found in section V and in the Response to Comments (RTC) document for this final rule.

To apply the second step of the framework, EPA used an air quality modeling-based technique to quantify the contributions in 2021 from upwind states to ozone concentrations at individual monitoring sites, as described in section V. Once quantified, EPA then evaluated these contributions relative to a screening threshold of 1 percent of the NAAQS (*i.e.,* 0.75 ppb) for those monitoring sites identified as nonattainment and/or maintenance receptors in step 1. States with contributions that equal or exceed 1 percent of the NAAQS were identified as warranting further analysis for significant contribution to nonattainment or interference with maintenance. States with contributions below 1 percent of the NAAQS were considered to not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. Based on EPA's updated air quality and contribution analysis using 2021 as the analytic year, EPA is determining that the following 12 states have contributions that equal or exceed 1 percent of the 2008 ozone NAAQS, and thereby warrant further analysis for significant contribution to nonattainment or interference with maintenance: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. EPA received comments on its approach to quantify interstate contributions and the use of a 1 percent of the NAAQS screening threshold. A summary of these comments, as well as EPA's responses, can be found in section V and in the RTC document for this final rule.

At the third step of the 4-step framework, EPA applied the multi-factor test used in the CSAPR Update, which evaluates cost, available emission reductions, and downwind air quality impacts to determine the amount of linked upwind states' emissions that ''significantly'' contribute to downwind nonattainment or maintenance receptors. In this action, EPA applied the multi-factor test to both EGU and non-EGU source categories and assessed potential emission reductions in all years for which there is a potential remaining interstate ozone transport problem (*i.e.,* through 2025), in order to ensure a full remedy in accordance with the *Wisconsin* decision.

In the proposed rule, EPA identified a control stringency that reflects the optimization of existing selective catalytic reduction (SCR) controls and installation of state-of-the-art NO_X combustion controls at EGUs, represented by a cost of $1,600 per ton of NO_X reduced. In this final rule, EPA is determining that optimization of existing selective non-catalytic reduction (SNCR) controls should also be included in EPA's identified EGU control stringency. As discussed in further detail in Section VI, EPA adjusted its representative cost for optimizing existing SNCR controls to $1,800 per ton in response to comments received on the proposed rule, as well as further EPA review of available information. EPA views $1,600 per ton for optimization of existing SCR controls and installation of state-of-the-art NO_X combustion controls and $1,800 per ton for optimization of existing SNCRs as comparable for policy purposes. In addition, other considerations beyond marginal cost and air quality improvement, as outlined in the section VI.D discussion of the multi-factor test, support inclusion of emission reduction potential from optimization of existing SNCR controls in EPA's identified EGU control stringency in this rule.

At the selected control stringency in this final rule, downwind ozone air quality improvements continue to be maximized relative to a representative marginal cost. That is, the ratio of emission reductions to marginal cost and the ratio of ozone improvements to marginal cost are maximized relative to the other control stringency levels evaluated. EPA finds that these cost-effective EGU NO_X reductions will make meaningful and timely improvements in downwind ozone air quality to address interstate ozone transport for the 2008 ozone NAAQS, as discussed in section VI.D.1 below. Further, this evaluation shows that emission budgets reflecting the optimization of existing SCRs and SNCRs, and installation of state-of-the-art NO_X combustion controls at EGUs do not over-control upwind states' emissions relative to either the downwind air quality problems to which they are linked at step 1 or the 1 percent contribution threshold that triggers further evaluation at step 2 of the 4-step framework.

EPA notes that two of these EGU emission controls (optimization of existing SCR controls and installation of state-of-the-art NO_X combustion controls) were also selected in the CSAPR Update for the 2017 ozone season, and which at that time EPA characterized as only a partial remedy. For this rule, EPA extends its evaluation of the reduction potential from these emission controls to years beyond 2017 in order to assess a full remedy. EPA's updated analysis, as discussed in more detail in section VI, leads the Agency to find that these emission controls can provide additional cost-effective emission reductions for the 2021 through 2024 ozone seasons. While EPA's analysis indicates that the majority of EGUs implemented these emission controls in response to the CSAPR Update, changes in the power sector since the 2017 ozone season and updated air quality and contribution analysis show that there is a demonstrated need to update the emission budgets for these 12 states to incentivize ongoing operation of identified emission controls to fully eliminate significant contribution and interference with maintenance. Likewise, EPA finds that many EGUs are already operating their existing SNCR controls to some extent but that additional cost-effective emission reductions for the 2021 through 2024 ozone seasons are available. Taken together, the emission budgets established in this final rule reflect EPA's identified EGU control stringency of optimization of all existing post-combustion controls (SCRs and SNCRs) by the 2021 ozone season, and the installation of state-of-the-art NO_X combustion controls by the 2022 ozone season.

For non-EGU industry sectors and emissions sources, EPA applied the step 3 multi-factor test to determine whether any emission reductions should be required from non-EGU sources to address significant contribution under the 2008 ozone NAAQS. EPA acknowledged in the proposed rule that its current datasets with information on emissions, existing controls on

emissions sources, emission-reduction potential, and air quality impacts for these sources are not as well developed as the datasets it has for EGUs. Nonetheless, using the best information currently available to the Agency, including some additional analysis conducted between the proposed rule and this final action, EPA is concluding that there are relatively fewer emission reductions available at a cost threshold comparable to the cost threshold selected for EGUs. In EPA's reasoned judgment, the Agency concludes such reductions are estimated to have a much smaller effect on any downwind receptor in the year by which EPA finds such controls could be installed. For these reasons, EPA is finding that limits on ozone season NO_X emissions from non-EGU sources are not required to eliminate significant contribution or interference with maintenance under the 2008 ozone NAAQS (see section VI.D.2).

Based on EPA's analysis at step 3, the Agency is promulgating EGU NO_X ozone season emission budgets developed using a uniform control stringency of optimization of existing SCRs and SNCRs, and installation of state-of-the-art NO_X combustion controls. EPA is determining that with implementation of this control stringency, the 12 states in Table I.A–2 will have fully addressed significant contribution under the good neighbor provision for the 2008 ozone NAAQS. EPA is aligning implementation of emission budgets with relevant attainment dates for the 2008 ozone NAAQS, consistent with CAA requirements and the D.C. Circuit's decision in *Wisconsin* v. *EPA*.[17] As EPA's final 2008 Ozone NAAQS SIP Requirements Rule [18] established the attainment date of July 20, 2021, for ozone nonattainment areas currently designated as Serious, EPA is establishing emission budgets and implementation of these emission budgets starting with the 2021 ozone season as shown in Table I.B–1.[19]

TABLE I.B–1—EGU NO_X OZONE SEASON EMISSION BUDGETS

[Ozone Season NO_X Tons] *

State	2021 Budget	2022 Budget	2023 Budget	2024 Budget
Illinois	9,102	9,102	8,179	8,059
Indiana	13,051	12,582	12,553	9,564
Kentucky	15,300	14,051	14,051	14,051
Louisiana	14,818	14,818	14,818	14,818
Maryland	1,499	1,266	1,266	1,348
Michigan	12,727	12,290	9,975	9,786
New Jersey	1,253	1,253	1,253	1,253
New York	3,416	3,416	3,421	3,403
Ohio	9,690	9,773	9,773	9,773
Pennsylvania	8,379	8,373	8,373	8,373
Virginia	4,516	3,897	3,980	3,663
West Virginia	13,334	12,884	12,884	12,884
Total	107,085	103,705	100,526	96,975

* NOTE—The 2022 and beyond budgets incorporate the installation of state-of-the-art NO_X combustion controls, whereas the 2021 budgets do not. Additionally, the 2024 emissions budget applies to 2024 and each year thereafter.

EPA further determined which emission reductions are impossible to achieve by the 2021 attainment date and whether any such additional emission reductions should be required beyond that date.[20] *See Wisconsin,* 938 F.3d at 320. EPA estimates that one part of the selected control stringency—installation of state-of-the-art NO_X combustion controls—requires approximately one to six months depending on the unit. Recognizing that the final rule will become effective slightly after the start of the 2021 ozone season, EPA determined it is not possible to install state-of-the-art NO_X combustion controls on a regional scale by the 2021 ozone season. Therefore, the 2021 ozone season emission budgets reflect only the optimization of existing SCR and SNCR controls at the affected EGUs, but the emission budgets for the 2022 ozone season and beyond reflect both the continued optimization of existing SCR and SNCR controls and installation of state-of-the-art NO_X combustion controls. Detailed installation-timing information for this technology is available in section VI.B and the EGU NO_X Mitigation Strategies Final Rule TSD.

As discussed in section VI.D.1, EPA's air quality projections anticipate that with the implementation of the identified control stringency for EGUs, downwind nonattainment and maintenance problems for the 2008 ozone NAAQS will persist through the 2024 ozone season. Therefore, EPA is adjusting emission budgets for upwind states that remain linked to downwind nonattainment and maintenance problems through the 2024 ozone season to incentivize the continued optimization of existing SCR and SNCR controls, and installation of state-of-the-art NO_X combustion controls. The 2024 emission budgets will then continue to apply in each year thereafter.

To apply the fourth step of the 4-step framework (*i.e.,* implementation), EPA is including enforceable measures in the promulgated FIPs to achieve the required emission reductions in each of the 12 states. Specifically, the FIPs require power plants in the 12 states to participate in a new CSAPR NO_X Ozone Season Group 3 Trading Program that largely replicates the existing CSAPR NO_X Ozone Season Group 2 Trading

[17] *See* 938 F.3d 303, 320 (D.C. Cir. 2019) (holding that EPA must align interstate transport compliance deadlines with downwind attainment deadlines unless EPA can demonstrate an impossibility or other necessity).

[18] 80 FR 12264, 12268; 40 CFR 51.1103.

[19] As discussed in section VII.C.4.a, EPA is ensuring that the enhanced control stringency represented by the new budgets will not take effect until the rule's effective date by issuing supplemental allowances for the portion of the 2021 ozone season occurring before the rule's effective date. Those supplemental allowances are not reflected in the 2021 Budget column in Table I.B–1.

[20] As described in detail in sections VI.B and VI.C, some mitigation efforts that require the installation of significant new plant hardware (*e.g.,* combustion control upgrade, selective catalytic reduction, and non-selective catalytic reduction) are not possible by the 2021 attainment date. However, EPA factored some of these measures (*i.e.,* combustion controls) into its quantification of significant contribution starting at the later date of the start of the 2022 ozone season.

Program with the main differences being the geography and budget stringency. This final rule leaves unchanged the budget stringency of the existing CSAPR NO_X Ozone Season Group 1 and Group 2 trading programs for the states that remain covered by those programs.

EPA is finalizing the proposed feature of the budget-setting process in which budgets are adjusted in 2022, 2023, and 2024 to account for future unit retirements and construction of new units that are known with sufficient certainty as of this final action. As discussed in section VII.C.3.b, in response to comments, EPA has made the methodology for allocating allowances to existing units in this final rule more consistent with the budget-setting process by eliminating allocations to units following their retirements in instances where the future retirements were scheduled in advance with sufficient certainty to be taken into account in the budget-setting process.

As proposed, to promote compliance flexibility without relaxing the program stringency identified as appropriate to address states' obligations under CAA section 110(a)(2)(D)(i)(I), EPA is creating a limited initial bank of allowances for use in the new Group 3 trading program by converting allowances banked in 2017–2020 under the existing Group 2 trading program at a formula-based conversion ratio. The target bank amount is based on the sum of the states' ''variability limits''—that is, the amounts by which emissions from a given state's units can exceed the state's emission budget before incurring a penalty surrender ratio. As discussed in section VII.C.4.b, in response to comments requesting greater certainty, in the final rule EPA has modified the proposed conversion ratio formula so as to yield an expected fixed conversion ratio of 8:1 (*i.e.,* eight Group 2 allowances must be exchanged for each Group 3 allowance). Participation in the conversion process is mandatory for the sources in states covered by the Group 3 trading program and, if the Group 3 sources' accounts collectively do not hold enough Group 2 allowances to exchange for the entire target bank amount, for holders of Group 2 allowances in non-source accounts as well.[21]

As discussed in section VII.C.4.c, the final rule also provides a second opportunity for sources to create an additional limited number of Group 3 allowances through the voluntary conversion of additional Group 2 allowances at an 18:1 conversion ratio (known as a ''safety valve''). Any 2017–2020 Group 2 allowances that have not already been exchanged for Group 3 allowances through the process of creating the initial bank may be used to obtain additional Group 3 allowances through the safety valve mechanism. The availability of the starting bank and any additional allowances converted using this ''safety valve'' ensures that compliance with the rule is feasible and addresses any market liquidity concerns raised by commenters.

The remainder of this preamble is organized as follows: section III describes EPA's legal authority for this final action; section IV describes the human health and environmental context, as well as EPA's approach for addressing interstate transport for the 2008 ozone NAAQS; section V describes EPA's assessment of downwind receptors of concern and upwind state ozone contributions to those receptors, including the air quality modeling platform and emission inventories that EPA used; section VI describes EPA's application of the multifactor test at step 3 of the 4-step framework to EGU and non-EGU sources, quantification of upwind state obligations in the form of final EGU NO_X emission budgets, and assessment of overcontrol; section VII details the implementation requirements including key elements of the CSAPR NO_X Ozone Season Group 3 Trading Program and deadlines for compliance; section VIII describes the expected costs, benefits, and other impacts of this final rule; section IX discusses changes to the existing regulatory text; and section X discusses the statutes and executive orders affecting this final rule. Each section includes a summary of the principal comments received with respect to that topic, as well as EPA's responses. The Revised Cross State Air Pollution Update Rule—Response to Comment document (RTC), which includes a compilation of all comments received and EPA's responses, has been included in the docket for this action.

C. Costs and Benefits

A summary of the key results of the cost-benefit analysis that was prepared for this final rule is presented in Table I.C–1. Table I.C–1 presents estimates of the present values (PV) and equivalent annualized values (EAV), calculated using discount rates of 3 and 7 percent as directed by OMB's Circular A–4, of the health benefits, climate benefits, compliance costs, and net benefits of the final rule, in 2016 dollars, discounted to 2021. The estimated net benefits are the estimated benefits minus the estimated costs of the final rule.

TABLE I.C–1—ESTIMATED HEALTH BENEFITS, CLIMTE BENEFITS, COMPLIANCE COSTS, AND NET BENEFITS OF THE FINAL RULE, 2021 THROUGH 2040

[Millions 2016$, discounted to 2021]

	3% Discount rate	7% Discount rate
Present Value:		
Health Benefits[b]	$4,800 and $37,000	$3,200 and $25,000.
Climate Benefits[b]	$4,400	$4,400.
Compliance Costs[c]	$370	$260.
Net Benefits	$8,800 and $41,000	$7,300 and $29,000.
Equivalent Annualized Value:		
Health Benefits	$320 and $2,500	$300 and $2,400.
Climate Benefits	$290	$290.
Compliance Costs	$25	$25.
Net Benefits	$590 and $2,800	$570 and $2,700.

[a] Numbers may not sum due to independent rounding.

[21] Compliance accounts of sources in states that continue to be covered by the existing Group 2 trading program will not be included in the conversion process.

[b] The health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. The two benefits estimates are separated by the word ''and'' to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates and should not be summed. Climate benefits are based on changes (reductions) in CO_2 emissions and are calculated using four different estimates of the social cost of carbon (SC–CO_2) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For the presentational purposes of this table, we show the climate benefits associated with the average SC–CO_2 at a 3 percent discount rate, but the Agency does not have a single central SC–CO_2 point estimate. We emphasize the importance and value of considering the benefits calculated using all four SC–CO_2 estimates; the additional benefit estimates are presented in Table VIII.5 in Section VIII. As discussed in Chapter 5 of the Regulatory Impact Analysis for the Final Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, a consideration of climate benefits calculated using discount rates below 3 percent, including 2 percent and lower, are also warranted when discounting intergenerational impacts.

[c] To estimate these annualized costs, EPA uses a conventional and widely accepted approach that applies a capital recovery factor (CRF) multiplier to capital investments and adds that to the annual incremental operating expenses. Annual costs were calculated using a 4.25% real discount rate consistent with the rate used in IPM's objective function for cost-minimization.

As shown in Table I.C–1, the PV of the health benefits of this final rule, discounted at a 3-percent discount rate, is estimated to be about $4,800 million and $37,000 million, with an EAV of about $320 million and $2,500 million. At a 7-percent discount rate, the PV of the health benefits is estimated to be $3,200 million and $25,000 million, with an EAV of about $300 million and $2,400 million. The two health benefits estimates for each discount rate reflect alternative ozone and $PM_{2.5}$ mortality risk estimates. The PV of the climate benefits of this final rule, discounted at a 3-percent rate, is estimated to be about $4,400 million, with an EAV of about $290 million. The PV of the compliance costs, discounted at a 3-percent rate, is estimated to be about $370 million, with an EAV of about $25 million. At a 7-percent discount rate, the PV of the compliance costs is estimated to be about $260 million, with an EAV of about $25 million.

II. General Information

A. Does this action apply to me?

This final rule affects EGUs, and regulates the groups identified in Table II.A–1:

TABLE II.A–1—REGULATED GROUPS

Industry group	NAICS *
Fossil fuel-fired electric power generation	221112

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware are regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your EGU entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 97.1004, as promulgated in this final action. 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.

III. EPA's Legal Authority for the Final Rule

A. Statutory Authority

The statutory authority for this final action is provided by the CAA as amended (42 U.S.C. 7401 *et seq.*). Specifically, sections 110 and 301 of the CAA provide the primary statutory underpinnings for this action. The most relevant portions of CAA section 110 are subsections 110(a)(1), 110(a)(2) (including 110(a)(2)(D)(i)(I)), 110(c)(1), and 110(k)(6).

CAA section 110(a)(1) provides that states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and that these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS.[22] The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA taking any action other than promulgating a new or revised NAAQS.[23]

EPA has historically referred to SIP submissions made for the purpose of satisfying the applicable requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' or ''iSIP'' submissions. CAA section 110(a)(1) addresses the timing and general requirements for iSIP submissions, and CAA section 110(a)(2) provides more details concerning the required content of these submissions.[24] It includes a list of specific elements that ''[e]ach such plan'' submission must address.[25]

CAA section 110(c)(1) requires the Administrator to promulgate a FIP at any time within two years after the Administrator: (1) Finds that a state has failed to make a required SIP submission; (2) finds a SIP submission to be incomplete pursuant to CAA section 110(k)(1)(C); or (3) disapproves a SIP submission. This obligation applies unless the state corrects the deficiency through a SIP revision that the Administrator approves before the FIP is promulgated.[26]

CAA section 110(a)(2)(D)(i)(I), also known as the ''good neighbor'' provision, provides the primary basis for this final action.[27] It requires that each state SIP include provisions sufficient to ''prohibit[ ], consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any [NAAQS].'' [28] EPA often refers to the emission reduction requirements under this provision as ''good neighbor obligations'' and submissions addressing these requirements as ''good neighbor SIPs.''

Once EPA promulgates a NAAQS, EPA must designate areas as being in ''attainment'' or ''nonattainment'' of the NAAQS, or ''unclassifiable.'' CAA section 107(d).[29] For ozone, nonattainment is further split into five classifications based on the severity of the violation—Marginal, Moderate, Serious, Severe, or Extreme. Higher classifications provide states with progressively more time to attain while imposing progressively more stringent control requirements. *See* CAA sections 181, 182.[30] In general, states with nonattainment areas classified as Moderate or higher must submit plans to EPA to bring these areas into

[22] 42 U.S.C. 7410(a)(1).

[23] *See EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 509–10 (2014).

[24] 42 U.S.C. 7410(a)(2).

[25] EPA's general approach to infrastructure SIP submissions is explained in greater detail in individual notices acting or proposing to act on state infrastructure SIP submissions and in guidance. *See, e.g.,* Memorandum from Stephen D. Page on Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 13, 2013).

[26] 42 U.S.C. 7410(c)(1).

[27] 42 U.S.C. 7410(a)(2)(D)(i)(I).

[28] *Id.*

[29] 42 U.S.C. 7407(d).

[30] 42 U.S.C. 7511, 7511a.

attainment according to the statutory schedule. CAA section 182.[31] If an area fails to attain the NAAQS by the attainment date associated with its classification, it is ''bumped up'' to the next classification. CAA section 181(b).[32]

Section 301(a)(1) of the CAA also gives the Administrator the general authority to prescribe such regulations as are necessary to carry out functions under the Act.[33] Pursuant to this section, EPA has authority to clarify the applicability of CAA requirements and undertake other rulemaking action as necessary to implement CAA requirements. In this final rule, among other things, EPA is clarifying the applicability of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. In particular, EPA is using its authority under CAA sections 110 and 301 to issue new or amended FIPs to revise NO_X ozone season emission budgets for 12 states to eliminate their significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS in another state, and EPA is making findings as to 9 additional states that the CSAPR Update FIPs (or SIP revisions later approved to replace those FIPs) are a complete remedy and need no further revision.[34] In addition, EPA is addressing its obligation to respond to the D.C. Circuit's remand of the CSAPR Update in *Wisconsin* v. *EPA,* 938 F.3d 303, with respect to the 21 states for which the FIPs created by that rule were found to be only a partial remedy. This final rule wholly resolves the Agency's obligations on remand. Finally, CAA section 301 [35] affords the Agency any additional authority that may be needed in order to make certain other changes to its regulations under 40 CFR parts 51, 52, 78, and 97, in order to effectuate the purposes of the Act. Such changes are discussed in section VII of this preamble.

B. Prior Good Neighbor Rulemakings Addressing Regional Ozone

EPA has issued several rules interpreting and clarifying the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the regional transport of ozone for states in the eastern United States. These rules, and the associated court decisions addressing these rules, summarized here, provide important direction regarding the requirements of CAA section 110(a)(2)(D)(i)(I).

The NO_X SIP Call, promulgated in 1998, addressed the good neighbor provision for the 1979 1-hour ozone NAAQS.[36] The rule required 22 states and the District of Columbia to amend their SIPs to reduce NO_X emissions that contribute to ozone nonattainment in downwind states. EPA set ozone season NO_X budgets for each state, and the states were given the option to participate in a regional trading program, known as the NO_X Budget Trading Program.[37] The D.C. Circuit largely upheld the NO_X SIP Call in *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000), *cert. denied,* 532 U.S. 904 (2001).

EPA's next rule addressing the good neighbor provision, the Clean Air Interstate Rule (CAIR), was promulgated in 2005 and addressed both the 1997 fine particulate matter ($PM_{2.5}$) NAAQS and 1997 ozone NAAQS.[38] CAIR required SIP revisions in 28 states and the District of Columbia to reduce emissions of sulfur dioxide (SO_2) and/or NO_X—important precursors of regionally transported $PM_{2.5}$ (SO_2 and annual NO_X) and ozone (summer-time NO_X). As in the NO_X SIP Call, states were given the option to participate in regional trading programs to achieve the reductions. When EPA promulgated the final CAIR in 2005, EPA also issued findings that states nationwide had failed to submit SIPs to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 $PM_{2.5}$ and 1997 ozone NAAQS.[39] On March 15, 2006, EPA promulgated FIPs to implement the emission reductions required by CAIR.[40] CAIR was remanded to EPA by the D.C. Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g,* 550 F.3d 1176. For more information on the legal issues underlying CAIR and the D.C. Circuit's holding in *North Carolina,* refer to the preamble of the CSAPR rule.[41]

In 2011, EPA promulgated the CSAPR to address the issues raised by the remand of CAIR. The CSAPR addressed the two NAAQS at issue in CAIR and additionally addressed the good neighbor provision for the 2006 $PM_{2.5}$ NAAQS.[42] The CSAPR required 28 states to reduce SO_2 emissions, annual NO_X emissions, and/or ozone season NO_X emissions that significantly contribute to other states' nonattainment or interfere with other states' abilities to maintain these air quality standards.[43] To align implementation with the applicable attainment deadlines, EPA promulgated FIPs for each of the 28 states covered by the CSAPR. The FIPs require EGUs in the covered states to participate in regional trading programs to achieve the necessary emission reductions. Each state can submit a good neighbor SIP at any time that, if approved by EPA, would replace the CSAPR FIP for that state.

The CSAPR was the subject of an adverse decision by the D.C. Circuit in August 2012.[44] However, this decision was reversed in April 2014 by the Supreme Court, which largely upheld the rule, including EPA's approach to addressing interstate transport in the CSAPR. *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014) (*EME Homer City I*). The rule was remanded to the D.C. Circuit to consider claims not addressed by the Supreme Court. *Id.* In July 2015 the D.C. Circuit generally affirmed EPA's interpretation of various statutory provisions and EPA's technical decisions. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (2015) (*EME Homer City II*). However, the court remanded the rule without vacatur for reconsideration of EPA's emissions budgets for certain states, which the court found may have over-controlled those states' emissions with respect to the downwind air quality problems to which the states

[31] 42 U.S.C. 7511a.

[32] 42 U.S.C. 7511(b).

[33] 42 U.S.C. 7601(a)(1).

[34] 42 U.S.C. 7410, 7601.

[35] 42 U.S.C. 7601.

[36] 63 FR 57356 (Oct. 27, 1998). As originally promulgated, the NO_X SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule's provisions with respect to that standard. *See* 84 FR 8422 (March 8, 2019).

[37] ''Allowance Trading,'' sometimes referred to as ''cap and trade,'' is an approach to reducing pollution that has been used successfully to protect human health and the environment. Trading programs have two key components: Emissions budgets (the sum of which provide a cap on emissions), and tradable allowances equal to the budgets that authorize allowance holders to emit a specific quantity (*e.g.,* one ton) of the pollutant. This approach ensures that the environmental goal is met while the tradable allowances provide flexibility for individual participants to establish and follow their own compliance path. Because allowances can be bought and sold in an allowance market, these programs are often referred to as ''market-based.''

[38] 70 FR 25162 (May 12, 2005).

[39] 70 FR 21147 (April 25, 2005).

[40] 71 FR 25328 (April 28, 2006).

[41] 76 FR 48208, 48217 (Aug. 8, 2011).

[42] 76 FR 48208.

[43] The CSAPR was revised by several rulemakings after its initial promulgation in order to revise certain states' budgets and to promulgate FIPs for five additional states addressing the good neighbor obligation for the 1997 ozone NAAQS. *See* 76 FR 80760 (Dec. 27, 2011); 77 FR 10324 (Feb. 21, 2012); 77 FR 34830 (June 12, 2012).

[44] On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), vacating the CSAPR. EPA sought review with the D.C. Circuit *en banc* and the D.C. Circuit declined to consider EPA's appeal *en banc. EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. January 24, 2013), ECF No. 1417012 (denying EPA's motion for rehearing en banc).

were linked. *Id.* at 129–30, 138. For more information on the legal issues associated with the CSAPR and the Supreme Court's and D.C. Circuit's decisions in the *EME Homer City* litigation, refer to the preamble of the CSAPR Update.[45]

In 2016, EPA promulgated the CSAPR Update to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS.[46] The final rule updated the CSAPR ozone season NO_X emissions budgets for 22 states to achieve cost-effective and immediately feasible NO_X emission reductions from EGUs within those states.[47] EPA aligned the analysis and implementation of the CSAPR Update with the 2017 ozone season in order to assist downwind states with timely attainment of the 2008 ozone NAAQS.[48] The CSAPR Update implemented the budgets through FIPs requiring sources to participate in a revised CSAPR NO_X ozone season trading program beginning with the 2017 ozone season. As under the CSAPR, each state could submit a good neighbor SIP at any time that, if approved by EPA, would replace the CSAPR Update FIP for that state. The final CSAPR Update also addressed the remand by the D.C. Circuit of certain states' CSAPR phase 2 ozone season NO_X emissions budgets in *EME Homer City II.* Further details regarding the CSAPR Update are discussed in sections IV.C.1.a and IV.C.1.b below.

In December 2018, EPA promulgated the CSAPR ''Close-Out,'' which determined that no further enforceable reductions in emissions of NO_X were required with respect to the 2008 ozone NAAQS for 20 of the 22 eastern states covered by the CSAPR Update, and reflected that determination in revisions to the existing state-specific sections of the CSAPR Update regulations for those states.[49] Further details on the CSAPR Close-Out are discussed in section IV.C.1.c below.

The CSAPR Update and the CSAPR Close-Out were both subject to legal challenges in the D.C. Circuit. *Wisconsin* v. *EPA,* 938 F.3d 303 (D.C. Cir. 2019) (*Wisconsin*); *New York* v. *EPA,* 781 Fed. App'x 4 (D.C. Cir. 2019) (*New York*). As discussed in greater detail in section IV.C.1.d below, in September 2019, the D.C. Circuit upheld the CSAPR Update in virtually all respects, but remanded the rule because it was partial in nature and did not fully eliminate upwind states' significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS by ''the relevant downwind attainment deadlines'' in the CAA. *Wisconsin,* 938 F.3d at 313–15. In October 2019, the D.C. Circuit vacated the CSAPR Close-Out on the same grounds that it remanded the CSAPR Update in *Wisconsin,* specifically that the Close-Out rule did not address good neighbor obligations by ''the next applicable attainment date'' of downwind states. *New York,* 781 Fed. App'x at 7.

IV. Air Quality Issues Addressed and Overall Approach for the Final Rule

A. The Interstate Ozone Transport Challenge

Interstate transport of NO_X emissions poses significant challenges with respect to the 2008 ozone NAAQS in the eastern U.S. and thus presents a threat to public health and welfare.

1. Nature of Ozone and the Ozone NAAQS

Ground-level ozone is not emitted directly into the air but is created by chemical reactions between NO_X and volatile organic compounds (VOC) in the presence of sunlight. Emissions from electric utilities and industrial facilities, motor vehicles, gasoline vapors, and chemical solvents are some of the major sources of NO_X and VOC.

Because ground-level ozone formation increases with temperature and sunlight, ozone levels are generally higher during the summer. Increased temperature also increases emissions of volatile man-made and biogenic organics and can indirectly increase NO_X emissions as well (*e.g.,* increased electricity generation for air conditioning).

The 2008 primary and secondary ozone standards are both 75 ppb as an 8-hour level.[50] Specifically, the standards require that the 3-year average of the fourth highest 24-hour maximum 8-hour average ozone concentration may not exceed 75 ppb as a truncated value (*i.e.,* digits to right of decimal removed).[51] In general, areas that exceed the ozone standard are designated as nonattainment areas, pursuant to the designations process under CAA section 107 and are subject to heightened planning requirements depending on the degree of severity of their nonattainment classification, *see* CAA sections 181, 182.

2. Ozone Transport

Studies have established that ozone formation, atmospheric residence, and transport occur on a regional scale (*i.e.,* thousands of kilometers) over much of the eastern U.S.[52] While substantial progress has been made in reducing ozone in many areas, interstate ozone transport is still an important component of peak ozone concentrations during the summer ozone season.

EPA has previously concluded in the NO_X SIP Call, CAIR, and the CSAPR that, for reducing regional-scale ozone transport, a NO_X control strategy would be most effective. NO_X emissions can be transported downwind as NO_X or, after transformation in the atmosphere, as ozone. As a result of ozone transport, in any given location, ozone pollution levels are impacted by a combination of local emissions and emissions from upwind sources. The transport of ozone pollution across state borders compounds the difficulty for downwind states in meeting health-based air quality standards (*i.e.,* NAAQS). Assessments of ozone, for example those conducted for the October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA–452/R–15–007), continue to show the importance of NO_X emissions for ozone transport. This analysis is in the docket for this final rule and can be also found at EPA's website at: *https://www.epa.gov/ttnecas1/docs/20151001ria.pdf.*

Further, studies have found that EGU NO_X emission reductions can be effective in reducing individual 8-hour peak ozone concentrations and in

[45] 81 FR 74504, 74511 (Oct. 26, 2016).

[46] 81 FR 74504.

[47] One state, Kansas, was made newly subject to the CSAPR ozone season NO_X requirement by the CSAPR Update. All other CSAPR Update states were already subject to ozone season NO_X requirements under the CSAPR.

[48] 81 FR 74516. EPA's final 2008 Ozone NAAQS SIP Requirements Rule, 80 FR 12264, 12268 (Mar. 6, 2015), revised the attainment deadline for ozone nonattainment areas designated as Moderate to July 20, 2018. *See* 40 CFR 51.1103. In order to demonstrate attainment by this deadline, states were required to rely on design values calculated using ozone season data from 2015 through 2017, since the July 20, 2018, deadline did not afford enough time for measured data of the full 2018 ozone season.

[49] 83 FR 65878, 65882 (Dec. 21, 2018). After promulgating the CSAPR Update and before promulgating the CSAPR Close-Out, EPA approved a SIP from Kentucky resolving the Commonwealth's good neighbor obligations for the 2008 ozone NAAQS. 83 FR 33730 (July 17, 2018). In this action, EPA is making an error correction under CAA section 110(k)(6) to convert this approval to a disapproval, because the Kentucky approval relied on the same analysis which the D.C. Circuit determined to be unlawful in the CSAPR Close-Out. Our action with respect to Kentucky is discussed in section IV.C.2.b. below.

[50] 73 FR 16436 (Mar. 27, 2008).

[51] 40 CFR part 50, Appendix P to part 50.

[52] Bergin, M.S. et al. (2007) Regional air quality: Local and interstate impacts of NO_X and SO_2 emissions on ozone and fine particulate matter in the eastern United States. Environmental Sci & Tech. 41: 4677–4689.

reducing 8-hour peak ozone concentrations averaged across the ozone season. For example, a study that evaluates the effectiveness on ozone concentrations of EGU NO_X reductions achieved under the NO_X Budget Trading Program (*i.e.,* the NO_X SIP Call) shows that regulating NO_X emissions in that program was highly effective in reducing both ozone and dry-NO_3 concentrations during the ozone season. Further, this study indicates that EGU emissions, which are generally released higher in the air column through tall stacks and are significant in quantity, may disproportionately contribute to long-range transport of ozone pollution on a per-ton basis.[53]

Previous regional ozone transport efforts, including the NO_X SIP Call, CAIR, and the CSAPR, required ozone season NO_X reductions from EGUs to address interstate transport of ozone. EPA took comment on regulating EGU NO_X emissions to address interstate ozone transport in the notice-and-comment process for these rulemakings. EPA received some comments suggesting it modify its pollutant focus to either include VOCs in addition to NO_X, or apply a more granular time scale. However, EPA did not modify its proposed approach in this final rule. These comments, as well as EPA's responses, are addressed in section VI.A and VII.B.

As described in section VI, EPA's analysis finds that the power sector continues to be capable of making NO_X reductions at reasonable cost that reduce interstate transport with respect to ground-level ozone. EGU NO_X emission reductions can be made in the near-term under this final rule by fully operating existing EGU NO_X post-combustion controls (*i.e.,* SCRs and SNCRs)—including optimizing NO_X removal by existing operational controls and turning on and optimizing existing idled controls; installation of (or upgrading to) state-of-the-art NO_X combustion controls; and shifting generation to units with lower NO_X emission rates. Further, additional assessment reveals that these available EGU NO_X reductions would make meaningful and timely improvements in ozone air quality.

EPA also observes that significant emission reduction potential from EGUs is available through post-combustion control retrofits (*e.g.,* new SCRs and new SNCRs). These controls reduce emissions and can have a meaningful air quality impact, but, in contrast to the controls discussed above, they are only available on a longer time frame (reflecting the time required to develop, construct, and install the technology) that exceeds the expected downwind nonattainment and maintenance problems for the 2008 ozone NAAQS and are estimated to have a higher cost.

3. Health and Environmental Effects

Exposure to ambient ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. In ecosystems, ozone exposure causes visible foliar injury, decreases plant growth, and affects ecosystem community composition. *See* EPA's October 2020 Regulatory Impact Analysis for the Proposed Revised Cross-State Air Pollution Rule (CSAPR) Update for the 2008 Ozone NAAQS (EPA–452/P–20–003), in the docket for this rule and available on EPA's website at: *https://www.epa.gov/sites/production/files/2020-10/documents/revised_csapr_update_ria_proposal.pdf*, for more information on the human health and welfare and ecosystem effects associated with ambient ozone exposure.

B. Relationship Between This Regulatory Action and the 2015 Ozone NAAQS

On October 1, 2015, EPA strengthened the ground-level ozone NAAQS to 70 ppb on an eight-hour averaging time.[54] While reductions achieved by this rule may have the effect of aiding in attainment and maintenance of the 2015 standard, this action is taken solely with respect to EPA's authority to address remaining CAA good neighbor obligations under the 2008 ozone NAAQS. EPA and states are working outside of this final action to address the CAA good neighbor provision for the 2015 ozone NAAQS, including consideration of any necessary control requirements for EGU and non-EGU sources.

EPA received several comments regarding the relationship of this rule to the 2015 ozone NAAQS and the schedule for implementation of good neighbor obligations related to that NAAQS. These comments are out of the scope of this action, which considers states' obligations under 2008 ozone NAAQS in response to the *Wisconsin* remand and the *New York* vacatur. *Wisconsin* v. *EPA,* 938 F.3d 303 (D.C. Cir. 2019). *New York* v. *EPA,* 781 F. App'x 4 (D.C. Cir. 2019). This action does not address any state's obligations under the 2015 ozone NAAQS. Nonetheless, the emission reductions and associated improvement in ozone levels achieved by this action are beneficial toward reducing ozone for purposes of the 2015 ozone NAAQS and its associated attainment planning and good neighbor requirements. In some cases, the reductions necessary to address significant contribution or interference with maintenance at receptors identified in this action for purposes of the 2008 ozone NAAQS will have the effect of incidentally improving ozone levels at potential receptors under the 2015 ozone NAAQS.

C. Approach To Address the Remanded Transport Obligations for the 2008 Ozone NAAQS

1. Events Affecting Application of the Good Neighbor Provision for the 2008 Ozone NAAQS

EPA is taking this action to address the remand of the CSAPR Update in *Wisconsin* v. *EPA,* 938 F.3d 303 (D.C. Cir. 2019). This section will discuss the key, relevant aspects of the CSAPR Update, the related CSAPR Close-Out, and the D.C. Circuit's decisions in *Wisconsin* and *New York* v. *EPA,* 781 Fed. App'x 4 (D.C. Cir. 2019) (the latter of which vacated the Close-out Rule based on the same reasoning as the *Wisconsin* decision remanding the Update). The basis for EPA's authority under CAA section 110(c) (42 U.S.C. 7410(c)) to promulgate good neighbor FIPs for the 21 states subject to this action on remand is discussed in sections III and IV.C.2.

a. The CSAPR Update

On October 26, 2016, the CSAPR Update was published in the **Federal Register**. 81 FR 74504. The purpose of the CSAPR Update was to address the good neighbor provision for the 2008 ozone NAAQS, as well as address the remanded CSAPR obligations for the 1997 ozone NAAQS. The CSAPR Update required EGUs in 22 states to reduce ozone season NO_X emissions that significantly contribute to other states' nonattainment or interfere with other states' abilities to maintain the 2008 ozone NAAQS.

To establish and implement the CSAPR Update emissions budgets, EPA followed the same 4-step analytic process that it used in the CSAPR, an

[53] Butler, et al., ''Response of Ozone and Nitrate to Stationary Source Reductions in the Eastern USA''. *Atmospheric Environment,* 2011.

[54] 80 FR 65291 (Oct. 26, 2015). On December 20, 2020, EPA published its decision, based on the air quality criteria, to retain the existing 8-hour NAAQS for ozone. *See https://www.epa.gov/ground-level-ozone-pollution/ozone-national-ambient-air-quality-standards-naaqs.*

approach which reflects the evolution of the Agency's prior regional interstate transport rulemakings related to ozone NAAQS. The 4-step framework is described in more detail in sections IV.C.3 and VI.A.

In the CSAPR Update, to evaluate the scope of the interstate ozone transport problem at step 1, EPA identified downwind areas that were expected to have problems attaining and maintaining the 2008 ozone NAAQS using modeling that projected air quality to a future compliance year. *See* 81 FR 74517. EPA aligned the analysis and implementation of the CSAPR Update with the 2017 ozone season (May 1–September 30) in order to assist downwind states with attainment of the 2008 ozone NAAQS by the 2018 Moderate area attainment date. *Id.* at 74516. (EPA's final 2008 Ozone NAAQS SIP Requirements Rule established the attainment deadline of July 20, 2018, for ozone nonattainment areas classified as Moderate.[55]) Because the attainment date fell during the 2018 ozone season, the 2017 ozone season was the last full season from which data could be used to determine attainment of the NAAQS by that date.

At step 2, EPA identified upwind states that collectively contribute to these identified downwind areas. In the CSAPR Update, EPA used a screening threshold of 1 percent of the NAAQS to identify states ''linked'' to downwind ozone problems sufficient for further evaluation for significant contribution to nonattainment or interference with maintenance of the NAAQS under the good neighbor provision. 81 FR 74518. This same threshold for analysis was used in the CSAPR as to the 1997 ozone NAAQS. *See* 76 FR at 48237–38.

At step 3, EPA quantified emissions from upwind states that would significantly contribute to nonattainment or interfere with maintenance by first evaluating various levels of uniform NO_X control stringency, each represented by an estimated representative marginal cost per ton of NO_X reduced. EPA then applied the same multi-factor test that was used in the CSAPR to evaluate cost, available emission reductions, and downwind air quality impacts to determine the appropriate level of uniform NO_X control stringency that addressed the impacts of interstate transport on downwind nonattainment or maintenance receptors. EPA used this multi-factor assessment to gauge the extent to which emission reductions could be implemented in the future compliance year (*i.e.,* 2017) and to evaluate the potential for over- and under-control of upwind state emissions.

Within the multi-factor test, EPA identified a ''knee in the curve,'' *i.e.,* a point at which the cost-effectiveness of the emission reductions was maximized, so named for the discernable turning point observable in a multi-factor (*i.e.,* multi-variable) curve. *See* 81 FR 74550. EPA concluded that this was at the point where emissions budgets reflected a uniform NO_X control stringency represented by an estimated marginal cost of $1,400 per ton (2011$) of NO_X reduced. This cost threshold in turn represented a control strategy of installing or upgrading combustion controls and optimizing existing SCR controls. In light of this multi-factor test, EPA determined this level of stringency in emissions budgets represented the level at which incremental EGU NO_X reduction potential and corresponding downwind ozone air quality improvements were maximized—relative to other control stringencies evaluated—with respect to marginal cost. That is, the ratio of emission reductions to marginal cost and the ratio of ozone improvements to marginal cost were maximized relative to the other levels of control stringency evaluated. EPA found that feasible and cost-effective EGU NO_X reductions were available to make meaningful and timely improvements in downwind ozone air quality to address interstate ozone transport for the 2008 ozone NAAQS for the 2017 ozone season. *Id.* at 74508. Further, the Agency's evaluation showed that emissions budgets reflecting the $1,400 per ton cost threshold did not over-control upwind states' emissions relative to either the downwind air quality problems to which they were linked or the 1 percent contribution threshold in step 2 that triggered their further evaluation in step 3. *Id.* at 74551–52.

At step 4, EPA finalized EGU ozone season NO_X emissions budgets developed using uniform control stringency represented by $1,400 per ton. These budgets represented emissions remaining in each state after elimination of the amounts of emissions that EPA identified would significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states. EPA promulgated FIPs requiring the covered power plants in the 22 covered states to participate in the CSAPR NO_X Ozone Season Group 2 Trading Program starting in 2017.[56]

b. Partial Nature of the CSAPR Update

At the time it promulgated the CSAPR Update, EPA considered the FIPs to be ''partial'' and that the rule ''may not be sufficient to fully address these states' good neighbor obligations'' for the 2008 ozone NAAQS for 21 of the 22 states included in that rule. 81 FR 74508, 74521 (Oct. 26, 2016). Based on information available at the time of the rule's promulgation, EPA was unable to conclude that the CSAPR Update fully addressed most of the covered states' good neighbor obligations for the 2008 ozone NAAQS. *Id.* at 74521. Information available at the time indicated that, even with the CSAPR Update implementation, several downwind receptors were expected to continue having problems attaining and maintaining this NAAQS and that emissions from upwind states were expected to continue to contribute greater than or equal to 1 percent of the NAAQS to these areas during the 2017 ozone season. *Id.* at 74551–52. Further, EPA could not conclude at that time whether additional EGU and non-EGU reductions implemented on a longer timeframe than 2017 would be needed to address states' good neighbor obligations for this NAAQS.

Additionally, EPA determined it was not feasible to complete an emissions control analysis that may otherwise have been necessary to evaluate full elimination of each state's significant contribution to nonattainment or interference with maintenance and also ensure that emission reductions already quantified in the rule would be achieved by 2017. *Id.* at 74522. EPA was unable to fully consider both non-EGU ozone season NO_X reductions and further EGU reductions that may have been achievable after 2017. *Id.* at 74521. *See* section IV.D.3 below.

Thus, EPA also could not make an emission reduction-based conclusion that the CSAPR Update would fully resolve states' good neighbor obligations with respect to the 2008 ozone NAAQS because the reductions evaluated and required by the CSAPR Update were limited in scope (both by technology and sector). As a result of the remaining air quality problems and the limitations

[55] *See* 80 FR 12264, 12268 (Mar. 6, 2015); 40 CFR 51.1103.

[56] The NO_X ozone season trading program created under the CSAPR was renamed the CSAPR NO_X Ozone Season Group 1 Trading Program and now applies only to sources in Georgia. In the CSAPR Update, EPA found that Georgia did not contribute to interstate transport with respect to the 2008 ozone NAAQS, but the state has an ongoing ozone season NO_X requirement under the CSAPR with respect to the 1997 ozone NAAQS.

on EPA's analysis, for all but one of the 22 affected states, EPA did not determine in the CSAPR Update that the rule fully addressed those states' downwind air quality impacts under the good neighbor provision for the 2008 ozone NAAQS. *Id.* at 74521. For one state, Tennessee, EPA determined in the final CSAPR Update that Tennessee's emissions budget fully eliminated the state's significant contribution to downwind nonattainment and interference with maintenance of the 2008 ozone NAAQS because the downwind air quality problems to which the state was linked were projected to be resolved with implementation of the CSAPR Update. *Id.* at 74552.

c. The CSAPR Close-Out

Following implementation of the CSAPR Update and the approval of Kentucky's SIP (under a court-ordered deadline),[57] on December 21, 2018, EPA issued the CSAPR ''Close-Out'' to address any good neighbor obligations that remained for the 2008 ozone NAAQS for the 20 remaining states in the CSAPR Update region. *See* 83 FR 65878 (Dec. 21, 2018). The CSAPR Close-Out made a determination that, based on additional information and analysis, the CSAPR Update fully addressed the remaining 20 affected states' good neighbor obligations for the 2008 ozone NAAQS. In particular, EPA determined that 2023 was an appropriate future analytic year considering relevant attainment dates and the time EPA estimated to be necessary to implement new NO_X control technologies at EGUs. Based on EPA's analysis of projected air quality in that year, EPA determined that, for the purposes of addressing good neighbor obligations for the 2008 ozone NAAQS, there would be no remaining nonattainment or maintenance receptors in the eastern U.S. As a result of this determination, EPA found that, with continued implementation of the CSAPR Update, these 20 states would no longer contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS. *Id.*

d. D.C. Circuit Decisions in *Wisconsin* v. *EPA* and *New York* v. *EPA*

The CSAPR Update was subject to petitions for judicial review, and the D.C. Circuit issued its opinion in *Wisconsin* v. *EPA* on September 13, 2019. 938 F.3d 303. The D.C. Circuit upheld the CSAPR Update in all respects save one: The court concluded that the CSAPR Update was inconsistent with the CAA to the extent that it was partial in nature and did not fully eliminate upwind states' significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS by the downwind states' 2018 Moderate attainment date. *Id.* at 313.

The court identified three bases for this holding: (1) The D.C. Circuit's prior opinion in *North Carolina* v. *EPA,* 531 F.3d 896 (2008), which held, in the context of CAIR, that the good neighbor provision requires states to eliminate significant contribution ''consistent with the provisions'' of Title I of the CAA, including the attainment dates applicable in downwind areas, 938 F.3d at 314 (citing 531 F.3d at 912); (2) the unreasonableness of EPA's interpretation of the phrase ''consistent with the provisions [of Title I]'' in the good neighbor provision as allowing for variation from the attainment schedule in CAA section 181 because it would enable significant contribution from upwind states to continue beyond that statutory timeframe, 938 F.3d at 315–18; and (3) the court's finding that the practical obstacles EPA identified regarding why it needed more time to implement a full remedy did not rise to the level of an ''impossibility,'' *id.* at 318–20. With respect to the third basis, the court also found EPA must make a higher showing of uncertainty regarding non-EGU point-source NO_X mitigation potential before declining to regulate such sources. *Id.* at 318–20.

However, the court identified flexibilities that EPA retains in administering the good neighbor provision, acknowledging that EPA has latitude in defining which upwind contribution ''amounts'' count as significant and thus must be abated, permitting EPA to consider, among other things, the magnitude of upwind states' contributions and the cost associated with eliminating them. 938 F.3d at 320. The court further noted that, in certain circumstances, EPA can grant extensions of the attainment deadlines under the Act; for instance, the court cited CAA section 181(a)(5), which allows EPA to grant one-year extensions from attainment dates under certain circumstances. *Id.* Finally, the court noted that EPA can attempt to show ''impossibility.'' *Id.* The court also recognized that the statutory command that compliance with the good neighbor provision must be achieved consistent with Title I might be read, upon a sufficient showing of necessity, to allow some deviation from downwind deadlines, so long as it is rooted in Title I's framework and provides a sufficient level of protection to downwind States. *Id.*

The court in *Wisconsin* remanded but did not vacate the CSAPR Update, finding that vacatur of the rule could cause harm to public health and the environment or disrupt the trading program EPA had established and that the obligations imposed by the rule may be appropriate and sustained on remand. *Id.* at 336. The court also rejected petitioners' request to place EPA on a six-month schedule to address the remand, noting the availability of ''mandamus'' relief before the D.C. Circuit should EPA fail to ''modify the rule in a manner consistent with our opinion.'' *Id.* at 336–37.

On October 1, 2019, in a judgment order, the D.C. Circuit vacated the CSAPR Close-Out on the same grounds that it remanded the Update in *Wisconsin. New York* v. *EPA,* 781 Fed. App'x 4 (D.C. Cir. 2019). Because the Close-Out analyzed the year 2023 rather than 2021 (''the next applicable attainment date'') and failed to demonstrate that it was impossible to address significant contribution by the 2021 attainment date, the court found the rule ran afoul of the *Wisconsin* holding. *Id.* at 7. ''As the EPA acknowledges, the Close-Out Rule 'relied upon the same statutory interpretation of the Good Neighbor Provision' that we rejected in *Wisconsin.* Thus, the Agency's defense of the Close-Out Rule in these cases is foreclosed.'' *Id.* at 6–7 (internal citation omitted). The court left open the possibility that the flexibilities identified in *Wisconsin,* 938 F.3d at 320, and outlined above, may be available to EPA on remand. *Id.*

Following *Wisconsin* and *New York,* EPA on remand must address good neighbor obligations for the 21 states within the CSAPR Update region for which the Update was only a partial remedy. As explained in the following section, EPA already retains FIP authority as to 20 of these states. In addition, EPA is taking action pursuant to CAA section 110(k)(6) (42 U.S.C. 7410(k)(6)) to find that Kentucky's SIP was approved in error and is thus promulgating a FIP for Kentucky consistent with the obligations for the other remaining CSAPR Update region states.

2. FIP Authority for Each State Covered by the Final Rule

On March 12, 2008, EPA promulgated a revision to the ozone NAAQS, lowering both the primary and

[57] *See* 83 FR 33730 (July 17, 2018) (approval of Kentucky's SIP for the 2008 ozone NAAQS). *See* section IV.C.2.b. for discussion of the final action regarding Kentucky in this notice.

secondary standards to 75 ppb. *See* National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008). Specifically, the standards require that an area may not exceed 0.075 parts per million (75 ppb) using the 3-year average of the fourth highest 24-hour maximum 8-hour rolling average ozone concentration. These revisions of the NAAQS, in turn, triggered a 3-year deadline for states to submit SIP revisions addressing infrastructure requirements under CAA sections 110(a)(1) and 110(a)(2), including the good neighbor provision. Several events affected the timely application of the good neighbor provision for the 2008 ozone NAAQS, including reconsideration of the 2008 ozone NAAQS and legal developments pertaining to the CSAPR, which created uncertainty surrounding EPA's statutory interpretation and implementation of the good neighbor provision.[58] Notwithstanding these events, EPA ultimately affirmed that states' good neighbor SIPs were due on March 12, 2011.

a. FIP Authority for the CSAPR Update States

EPA subsequently took several actions that triggered EPA's obligation under CAA section 110(c) to promulgate FIPs addressing the good neighbor provision for several states.[59] First, on July 13, 2015, EPA published a rule finding that 24 states failed to make complete submissions that address the requirements of section 110(a)(2)(D)(i)(I) related to the interstate transport of pollution as to the 2008 ozone NAAQS. *See* 80 FR 39961 (effective August 12, 2015). This finding triggered a two-year deadline for EPA to issue FIPs to address the good neighbor provision for these states by August 12, 2017. The CSAPR Update finalized FIPs for 13 of these states (Alabama, Arkansas, Illinois, Iowa, Kansas, Michigan, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia), requiring their participation in a NO_X trading program. EPA also determined in the CSAPR Update that the Agency had no further FIP obligation as to nine additional states identified in the finding of failure to submit because these states did not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS. *See* 81 FR 74506.[60] [61] On June 15, 2016, and July 20, 2016, EPA published additional rules finding that Maryland and New Jersey, respectively, also failed to submit transport SIPs for the 2008 ozone NAAQS. *See* 81 FR 38963 (June 15, 2016) (New Jersey, effective July 15, 2016); 81 FR 47040 (July 20, 2016) (Maryland, effective August 19, 2016). The finding actions triggered two-year deadlines for EPA to issue FIPs to address the good neighbor provision for Maryland by August 19, 2018, and for New Jersey by July 15, 2018. The CSAPR Update also finalized FIPs for these two states.

In addition to these findings, EPA finalized disapproval or partial disapproval actions for good neighbor SIPs submitted by Indiana, Kentucky, Louisiana, New York, Ohio, Texas, and Wisconsin.[62] These disapprovals triggered EPA's obligation to promulgate FIPs to implement the requirements of the good neighbor provision for those states within two years of the effective date of each disapproval or, in the case of Kentucky, within two years of the issuance of the judgment in a subsequent Supreme Court decision.[63] EPA promulgated FIPs in the CSAPR Update for each of these states.

As discussed in more detail above in section IV.C.1, in issuing the CSAPR Update, EPA could not determine that it had entirely addressed EPA's outstanding CAA obligations to implement the good neighbor provision with respect to the 2008 ozone NAAQS for 21 of 22 states covered by that rule. Accordingly, the CSAPR Update did not fully satisfy EPA's obligation under CAA section 110(c) to address the good neighbor provision requirements for those states by approving SIPs, issuing FIPs, or some combination of those two actions. EPA found that the CSAPR Update FIPs fully addressed the good neighbor provision for the 2008 ozone NAAQS only with respect to Tennessee.

b. Correction of EPA's Determination Regarding Kentucky's SIP Revision and Its Impact on EPA's FIP Authority for Kentucky

After promulgating the CSAPR Update and before promulgating the CSAPR Close-Out, EPA approved a SIP submission from Kentucky resolving the Commonwealth's good neighbor obligations for the 2008 ozone NAAQS based on a demonstration that no further emission reductions were needed from Kentucky with the CSAPR Update FIP for Kentucky in place. *See* 83 FR 33730 (July 17, 2018). The action was separate from the CSAPR Close-Out because it was taken in response to a May 23, 2017 order from the U.S. District Court for the Northern District of California requiring EPA to take a final action fully addressing the good neighbor obligation for the 2008 ozone NAAQS for Kentucky by June 30, 2018.[64] EPA was obligated to address the outstanding obligation by either approving a SIP revision submitted by Kentucky or promulgating a FIP to address any remaining obligation.[65]

On May 10, 2018, Kentucky submitted a final SIP revision to EPA, on which the Agency finalized approval consistent with the court-ordered deadline. *See* 83 FR 33730. The Kentucky SIP revision that EPA approved relied on the reductions from the CSAPR Update FIP for Kentucky and provided a technical analysis, including emission projections and air quality modeling for 2023, showing that

[58] These events are described in detail in section IV.A.2 of the CSAPR Update. *See* 81 FR 74515.

[59] This section of the preamble focuses on SIP and FIP actions for those states addressed in the CSAPR Update. EPA has also acted on SIPs for other states not mentioned in this action. The memorandum, ''Proposed Action, Status of 110(a)(2)(D)(i)(I) SIPs for the 2008 Ozone NAAQS,'' more fully describes the good neighbor SIP status for the 2008 ozone NAAQS and is available in the docket for this rule.

[60] The nine states were Florida, Georgia, Maine, Massachusetts, Minnesota, New Hampshire, North Carolina, South Carolina, and Vermont. These determinations were not challenged in *Wisconsin,* and EPA is not reopening these determinations in this rule.

[61] The two remaining states addressed in the findings of failure to submit (California and New Mexico) were not part of the CSAPR Update or the CSAPR Close-Out analysis and are not addressed in this rule.

[62] *See* the following actions: Indiana (81 FR 38957, June 15, 2016); Kentucky (78 FR 14681, March 7, 2013); Louisiana (81 FR 53308, August 12, 2016); New York (81 FR 58849, August 26, 2016); Ohio (81 FR 38957, June 15, 2016); Texas (81 FR 53284, August 12, 2016); and Wisconsin (81 FR 53309, August 12, 2016).

[63] In the 2013 disapproval action for Kentucky, EPA stated that it had no mandatory duty to issue a FIP because of the D.C. Circuit's holding in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), that EPA cannot impose good neighbor FIPs without first quantifying states' obligations. *See* 78 FR 14681. In 2014, the Supreme Court reversed the D.C. Circuit's holding. *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 509–10 (2014). In light of the Supreme Court's decision, on review of our 2013 disapproval action for Kentucky in the Sixth Circuit, EPA requested, and the court granted, a vacatur and remand of the portion of EPA's final action that determined that a FIP obligation was not triggered. *See* Order, *Sierra Club* v. *EPA,* No. 13–3546, ECF No. 74–1 (6th Cir. Mar. 13, 2015). On remand, EPA determined that its FIP obligation as to Kentucky was triggered as of June 2, 2014, the date of issuance of the Supreme Court's judgment. *See* 81 FR 74513.

[64] *See* Order, *Sierra Club* v. *Pruitt,* No. 3:15–cv–04328 (N.D. Cal. May 23, 2017).

[65] The obligation ultimately derives from EPA's 2013 action disapproving Kentucky's SIP addressing the 2008 ozone NAAQS on the basis that Kentucky relied on the CAIR program for the 2008 ozone NAAQS good neighbor obligation. However, as previously discussed, the trigger for the timing of the obligation was the 2014 issuance of the Supreme Court's judgment in *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014). *See supra* note 63.

with the CSAPR Update level of reductions, the receptors to which Kentucky was linked were attaining and maintaining the 2008 ozone NAAQS in 2023. This allowed EPA to conclude that Kentucky did not have any further obligation for the 2008 ozone NAAQS, and EPA approved the SIP revision. The SIP revision from Kentucky was an analytical demonstration only, and it did not replace the CSAPR Update FIP; rather, the CSAPR Update FIP was left in place for Kentucky and was relied on in the state's demonstration.

The approval relied on the same rationale and technical analysis—including the use of a 2023 analytic year—that was eventually used for the other CSAPR Update FIP states in the CSAPR Close-Out. EPA's approval stated:

''no additional emission reductions are necessary to address the good neighbor provision for the 2008 ozone NAAQS beyond those required by the Cross-State Air Pollution Rule Update (CSAPR Update) federal implementation plan (FIP). Accordingly, EPA is approving Kentucky's submission because it partially addresses the requirements of the good neighbor provision for the 2008 ozone NAAQS, and it resolves any obligation remaining under the good neighbor provision after promulgation of the CSAPR Update FIP. The approval of Kentucky's SIP submission and the CSAPR Update FIP, together, fully address the requirements of the good neighbor provision for the 2008 ozone NAAQS for Kentucky.''

83 FR 33730.

Subsequent to EPA's approval of the Kentucky SIP submission, EPA issued the CSAPR Close-Out, which concluded that, based on essentially the same analysis used for Kentucky, none of the other 20 CSAPR Update states had further good neighbor obligations to address the 2008 8-hour ozone NAAQS. In the Fall of 2019, the D.C. Circuit issued the *Wisconsin* and *New York* decisions remanding the CSAPR Update Rule and vacating the CSAPR Close-Out (see section IV.C.1.d.).

Kentucky's CSAPR Update FIP, which Kentucky relied on (and did not replace) in its SIP revision, is part of the CSAPR Update remand, and EPA must address it in this action. Further, the D.C. Circuit's review of the CSAPR Close-Out found fault with, and vacated, the same rationale for other states that EPA had used to approve Kentucky's SIP submission in June 2018.

Therefore, in light of the remand of Kentucky's CSAPR Update FIP in *Wisconsin* and vacatur of the CSAPR Close-Out in *New York,* EPA is determining in this final action that its approval of Kentucky's SIP revision as fully resolving the state's 2008 ozone NAAQS good neighbor obligations was in error. Section 110(k)(6) of the CAA (42 U.S.C. 7410(k)(6)) gives the Administrator authority, without any further submission from a state, to revise certain prior actions, including actions to approve SIPs, upon determining that those actions were in error. The court's remand of the partial FIP for Kentucky in *Wisconsin* and the vacatur of EPA's conclusions for states identically situated to Kentucky in the CSAPR Close-Out means that EPA's approval of Kentucky's SIP was in error. EPA is compelled on remand to act consistently with the court's opinion and has reassessed Kentucky's good neighbor obligations under the 2008 ozone NAAQS here. In doing so, EPA's analysis identifies an additional emission reduction obligation for Kentucky. Therefore, EPA is correcting the error in Kentucky's SIP approval through this final rulemaking, as allowed by the CAA when a prior SIP approval was in error. This error correction under CAA section 110(k)(6) revises the approval of Kentucky's SIP to a disapproval and rescinds any statements that the SIP submission fully addresses the requirements of the good neighbor provision for the 2008 ozone NAAQS for Kentucky. The Kentucky approval relied on the same analysis that the D.C. Circuit determined to be unlawful in the CSAPR Close-Out: It only addressed conditions in 2023, ignoring the 2021 attainment date without a showing of impossibility or necessity in doing so. Kentucky's remanded partial FIP has been reassessed in this action, consistent with EPA's methodology to address the other 20 states with remanded CSAPR Update FIPs, and consistent with the D.C. Circuit's direction in *Wisconsin* and *New York.* As discussed in greater detail in the sections that follow, EPA is determining that there are additional emission reductions that are required for Kentucky to fully satisfy its good neighbor obligations for the 2008 ozone NAAQS. The analysis on which EPA reaches this conclusion for Kentucky is the same, regionally consistent analytical framework on which the Agency is taking action for all of the other CSAPR Update states with remanded FIPs.

Comment: The Agency received several comments regarding its error correction for Kentucky from the state and from sources in Kentucky. The commenters generally disagreed with EPA's use of CAA section 110(k)(6) to correct the error in the SIP approval based on the *Wisconsin* and *New York* decisions. Commenters did not agree that the court decisions are applicable to the Kentucky action or that EPA had any other basis to determine that Kentucky has outstanding good neighbor obligations under the 2008 ozone NAAQS. Two commenters also argued that EPA overestimated emissions from Kentucky in the modeling released with the proposed rule of this action.

Response: EPA disagrees that there is no basis to correct its error in approving Kentucky's SIP revision or to find that Kentucky has outstanding good neighbor obligations under the 2008 ozone NAAQS. *Wisconsin* and *New York* require the state or EPA to analyze the interstate impacts of Kentucky's emissions by the 2021 Serious attainment date. The Kentucky SIP approval is based on analysis of the 2023 ozone season. Further, the Kentucky SIP approval relies on reductions achieved from Kentucky's CSAPR Update FIP, which was remanded by *Wisconsin.* The information provided by commenters on emissions from Kentucky was already reflected in EPA's modeling and did not present information with regard to Kentucky that changed EPA's 2021 analysis, which shows Kentucky has further good neighbor obligations under the 2008 ozone NAAQS. Comments related to EPA's technical basis for concluding that Kentucky has further obligations, including comments regarding alleged additional emission reductions achieved by Kentucky sources, are addressed in the RTC document.

c. CSAPR Update SIP Revisions That Do Not Affect FIP Authority

Subsequent to the promulgation of the CSAPR Update, EPA approved SIPs fully replacing the CSAPR Update FIPs for Alabama, Indiana, and Missouri.[66] In those SIP approvals and consistent with the conclusions of the CSAPR Update, EPA found that the SIPs partially satisfy Alabama's, Indiana's, and Missouri's good neighbor obligations for the 2008 ozone NAAQS. Thus, EPA continues to have an obligation to fully address good neighbor requirements for the 2008 ozone NAAQS with respect to Alabama and Missouri, stemming from the July 13, 2015, findings of failure to submit, and Indiana, due to the June 15, 2016, disapproval of the state's good neighbor SIP. *See* 80 FR 39961; 81 FR 38957. Other states have also submitted 2008 ozone NAAQS good neighbor SIPs or SIPs to replace their CSAPR FIPs, some of which EPA has approved and some

[66] *See* 82 FR 46674 (Oct. 6, 2017) (Alabama); 83 FR 64472 (Dec. 17, 2018) (Indiana); 84 FR 66316 (Dec. 4, 2019) (Missouri).

of which still remain pending. These circumstances do not affect the scope or basis for this rulemaking.

d. Summary of Authority for FIPs for This Action

Table IV.C–1 summarizes the statutory deadline for EPA to address its FIP obligation under CAA section 110(c) and the event that activated EPA's obligation for each of the 21 CSAPR Update states that are the subject of this final action. For more information regarding the actions triggering EPA's FIP obligation and EPA's action on SIPs addressing the good neighbor provision for the 2008 ozone NAAQS, see the memorandum, ''Final Action, Status of 110(a)(2)(D)(i)(I) SIPs for the 2008 Ozone NAAQS,'' in the docket for this action.

TABLE IV.C–1—ACTIONS THAT ACTIVATED EPA'S STATUTORY FIP DEADLINES

State	Type of action (**Federal Register** citation, publication date)	Statutory FIP deadline †
Alabama	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Arkansas	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Illinois	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Indiana	SIP disapproval (81 FR 38957, 6/15/2016)	7/15/2018
Iowa	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Kansas	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Kentucky	SIP disapproval (78 FR 14681, 3/7/2013)	6/2/2016
Louisiana	SIP disapproval (81 FR 53308, 8/12/2016)	9/12/2018
Maryland	Finding of Failure to Submit (81 FR 47040, 7/20/2016)	8/19/2018
Michigan	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Mississippi	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Missouri	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
New Jersey	Finding of Failure to Submit (81 FR 38963, 6/15/2016)	7/15/2018
New York	SIP disapproval (81 FR 58849, 8/26/2016)	9/26/2018
Ohio	SIP disapproval (81 FR 38957, 6/15/2016)	7/15/2018
Oklahoma	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Pennsylvania	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Texas	SIP disapproval (81 FR 53284, 8/12/2016)	9/12/2018
Virginia	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
West Virginia	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Wisconsin	Partial SIP disapproval as to prong 2 (81 FR 53309, 8/12/2016)	9/12/2018

† For states other than Kentucky, the FIP deadline is two years from the effective date of the SIP disapproval or Finding of Failure to Submit, which generally trails the publication date by 30 days. For Kentucky, the FIP deadline is two years after the issuance of the Supreme Court's judgment in *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014). *See supra* note 63.

3. The 4-Step Good Neighbor Framework

The CSAPR and the subsequent CSAPR Update, building on EPA's prior methodologies in the NO_X SIP Call and CAIR, established a 4-step process to address the requirements of the good neighbor provision.[67] In this final action to address the remand of the CSAPR Update, EPA follows the same steps. These steps are: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) determining which upwind states contribute to these identified problems in amounts sufficient to ''link'' them to the downwind air quality problems; (3) for states linked to downwind air quality problems, identifying upwind emissions that significantly contribute to downwind nonattainment or interfere with downwind maintenance of the NAAQS; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implementing the necessary emission reductions through enforceable measures.

Step 1—In the CSAPR, downwind air quality problems were assessed using modeled future air quality concentrations for a year aligned with attainment deadlines for the NAAQS considered in that rulemaking. The assessment of future air quality conditions generally accounts for on-the-books emission reductions and the most up-to-date forecast of future emissions in the absence of the transport policy being evaluated (*i.e.,* base case conditions). The locations of downwind air quality problems are identified as those with receptors that are projected to be unable to attain (*i.e.,* nonattainment receptor) or maintain (*i.e.,* maintenance receptor) the NAAQS. In the CSAPR Update, EPA also considered current monitored air quality data to further inform the projected identification of downwind air quality problems. These same considerations are included for this final rule. EPA is not reopening the definition of nonattainment and maintenance receptors promulgated in the CSAPR Update. Further details and application of step 1 for this rule are described in section V.

Step 2—The CSAPR and the CSAPR Update used a screening threshold of 1 percent of the NAAQS to identify upwind states that were ''linked'' to downwind air pollution problems. States with contributions greater than or equal to the threshold for at least one downwind problem receptor (*i.e.,* nonattainment or maintenance receptor identified in step 1) were identified as needing further evaluation for actions to address transport if their air quality was impacted.[68] EPA evaluated a given state's contribution based on the average relative downwind impact calculated over multiple days.[69] States whose air

[67] *See* CSAPR, Final Rule, 76 FR 48208, 48248–48249 (Aug. 8, 2011); CSAPR Update, Final Rule, 81 FR 74504, 74517–74521 (Oct. 26, 2016).

[68] For ozone the impacts would include those from (VOC) and NO_X and from all sectors.

[69] The number of days used in calculating the average contribution metric has historically been determined in a manner that is generally consistent with EPA's recommendations for projecting future year ozone design values. Our ozone attainment demonstration modeling guidance at the time of CSAPR recommended using all model-predicted days above the NAAQS to calculate future year design values (*https://www3.epa.gov/ttn/scram/guidance/guide/final-03-pm-rh-guidance.pdf*). In 2014 EPA issued draft revised guidance that changed the recommended number of days to the

Continued

quality impacts to all downwind problem receptors were below this threshold did not require further evaluation for actions to address transport—that is, these states were determined to not contribute to downwind air quality problems and therefore had no emission reduction obligations under the good neighbor provision. EPA has used this threshold because a notable portion of the transport problem in the eastern half of the United States can result from relatively small contributions from a number of upwind states. Use of the 1 percent threshold for the CSAPR is discussed in the preambles to the proposed and final CSAPR rules. *See* 75 FR 45237 (Aug. 2, 2010); 76 FR 48238 (Aug. 8, 2011). The same metric is discussed in the CSAPR Update Rule. *See* 81 FR 74538. While EPA has updated its air quality data for determining contributions, the Agency is not reopening the use of the 1 percent threshold in this action to address the remand of the CSAPR Update. Application of step 2 for this rule is described in section V.

Step 3—For states that are linked in step 2 to downwind air quality problems, the CSAPR and the CSAPR Update evaluated NO_X reductions that were available in upwind states by applying a uniform control stringency (represented by a cost per ton of NO_X reduced) to entities in these states. EPA evaluated multiple factors, including NO_X reduction potential, cost, and downwind air quality improvements available at several control stringencies in the multi-factor test. This evaluation quantified the magnitude of emissions that significantly contribute to nonattainment or interfere with maintenance of a NAAQS downwind and apportioned upwind responsibility among linked states, an approach upheld by the U.S. Supreme Court in *EPA* v. *EME Homer City.*[70] In this action, EPA applies this same approach to identify NO_X emission reductions necessary to address significant contribution for the 2008 ozone NAAQS.

In *EME Homer City,* the Supreme Court held that ''EPA cannot require a State to reduce its output of pollution by more than is necessary to achieve attainment in every downwind State or at odds with the one-percent threshold the Agency has set.'' 572 U.S. at 521. The Court acknowledged that ''instances of 'over-control' in particular downwind locations may be incidental to reductions necessary to ensure attainment elsewhere.'' *Id.* at 492.

> ''Because individual upwind States often 'contribute significantly' to nonattainment in multiple downwind locations, the emissions reductions required to bring one linked downwind State into attainment may well be large enough to push other linked downwind States over the attainment line. As the Good Neighbor Provision seeks attainment in *every* downwind State, however, exceeding attainment in one State cannot rank as 'over-control' unless unnecessary to achieving attainment in *any* downwind State. Only reductions unnecessary to downwind attainment *anywhere* fall outside the Agency's statutory authority.''

Id. at 522 (footnotes excluded).

The Court further explained that ''while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid 'under-control,' *i.e.,* to maximize achievement of attainment downwind.'' *Id.* at 523. Therefore, in the CSAPR Update, EPA evaluated possible over-control by considering whether an upwind state is linked solely to downwind air quality problems that can be resolved at a lower cost threshold, or if upwind states would reduce their emissions at a lower cost threshold to the extent that they would no longer meet or exceed the 1 percent air quality contribution threshold. *See* 81 FR at 74551–52. This evaluation of cost, NO_X reductions, and air quality improvements, including consideration of potential over-control, results in EPA's determination of upwind emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind and should therefore be eliminated. This allows EPA to then determine an enforceable emissions limit (often embodied in the form of an emissions budget) for the covered sources. Emissions budgets are the remaining allowable emissions after the elimination of emissions identified as significantly contributing to nonattainment or interfering with maintenance of the standard downwind.

In both the CSAPR and the CSAPR Update, EPA focused its step 3 analysis on EGUs. In the CSAPR Update, EPA did not quantify non-EGU stationary source emission reductions to address interstate ozone transport for the 2008 ozone NAAQS for two reasons. First, EPA explained that there was greater uncertainty in EPA's assessment of non-EGU NO_X mitigation potential, and that more time would be required for states and EPA to improve non-EGU point source data and pollution control assumptions before it could develop emission reduction obligations based on that data. *See* 81 FR 74542. Second, EPA explained that it did not believe that significant, certain, and meaningful non-EGU NO_X reduction was in fact feasible for the 2017 ozone season. *Id.* In *Wisconsin,* the D.C. Circuit found that the practical obstacles EPA identified with respect to its evaluation of non-EGUs did not rise to the level of an ''impossibility,'' 938 F.3d at 318–20. The court also found that EPA must make a higher showing of uncertainty regarding non-EGU point-source NO_X mitigation potential before declining to regulate such sources on such a basis, *id.* Therefore, as discussed in more detail in section VI, in this final action on remand from *Wisconsin,* EPA has included all major stationary source sectors in the linked upwind states in its ''significant contribution'' analysis at step 3 of the 4-step framework.

Step 4—the CSAPR and the CSAPR Update established interstate trading programs to implement the necessary emission reductions. Each state subject to the program is assigned an emissions budget for the covered sources. Emissions allowances are allocated to units covered by the trading program, and the covered units then surrender allowances after the close of each control period in an amount equal to their ozone season EGU NO_X emissions. Emissions allowances are allocated to units covered by the respective trading program, and the covered units then surrender allowances after the close of each control period in an amount equal to their ozone season EGU NO_X emissions.

All of EPA's trading programs established under the good neighbor provision allow for interstate trading. However, in order to ensure that each state achieves reductions proportional to the level of their significant contribution, beginning with the CSAPR, EPA established ''assurance levels'' set as percentage of each state's budget (*e.g.,* 121 percent) above which emissions from sources in that state become subject to a higher ''penalty'' surrender ratio. These assurance levels are designed to allow for a certain level of year-to-year variability within power sector emissions to account for fluctuations in demand and EGU

top-10 model predicted days (*https://www3.epa.gov/ttn/scram/guidance/guide/Draft-O3-PM-RH-Modeling_Guidance-2014.pdf*). For the CSAPR Update EPA transitioned to calculating design values based on this draft revised approach. The revised modeling guidance was finalized in 2019 and, in this regard, EPA is calculating both the ozone design values and the contributions based on a top-10 day approach. U.S. Environmental Protection Agency, 2018. Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, Research Triangle Park, NC. (*https://www3.epa.gov/ttn/scram/guidance/guide/O3-PM-RH-Modeling_Guidance-2018.pdf*).

[70] *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014).

operations. The levels are therefore set by determining a ''variability limit,'' calculated based on an analysis of the historical level of variability in EGU operations.

Thus, both the CSAPR and the CSAPR Update set assurance levels equal to the sum of each state's emissions budget plus its variability limit. The CSAPR and the CSAPR Update included assurance provisions to limit state emissions to levels below 121 percent of the state's ozone season NOx emissions budget by requiring additional allowance surrenders in the instance that emissions in the state exceed this level. This limit on the degree to which a state's emissions can exceed its budget is responsive to previous court decisions (see discussion in section VII.C.2 of this preamble) and was not part of the CSAPR Update aspects remanded to EPA in *Wisconsin.* EPA is applying the same variability limits and assurance provisions in this rule.[71] Implementation using a trading program is further described in section VII.

EPA received several comments related to its overall approach in this rulemaking. These comments related to the following topics: (1) Whether this rule remains only a partial remedy in terms of both the amount of emission reductions achieved and the timing of implementation; (2) whether any additional EGU emission reductions relative to the CSAPR Update are permissible in light of the CSAPR Update record and the scope of the D.C. Circuit's decision in *Wisconsin;* and (3) EPA's use of cost to define significant contribution. Other comments on EPA's overall approach in this action are addressed in the RTC document.

Comment: Numerous commenters asserted that despite EPA purporting to fully address the covered states' good neighbor obligations, the rule remains only a partial solution, and allows upwind states' significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS to continue past the next attainment date. One commenter asserts that this rule will ''hinder'' attainment of the 2015 ozone NAAQS in downwind states. Many commenters claim that the rule is insufficient to ensure downwind attainment of the NAAQS. The commenters question EPA's application of the 4-step framework and disagree with the Agency's conclusions drawn from that analysis, particularly with respect to the EPA's determinations at step 3 and the emissions controls adopted at step 4. Some commenters also challenge the legal basis for the selection of the 2021 analytic year, as opposed to 2020, and whether EPA has met the requirement to obtain reductions ''as expeditiously as practicable'' or otherwise complied with the holdings in *Wisconsin* and *New York* to eliminate significant contribution on par with the relevant downwind attainment deadlines. *See, e.g. Wisconsin,* 938 F.3d at 315. Some argue that EPA depends on claims of technical infeasibility or scientific uncertainty and flawed cost effectiveness considerations in not requiring more emission reductions on a shorter timeframe. Others believe the implementation timeframe of this rule to be a phased plan in direct conflict with *Wisconsin* and *New York.* One commenter concludes there is a ''mismatch'' between EPA's 4-step framework's multi-factor test at step 3 and the implementation timeframes in this rule. They also argue that EPA should consider the cost of RACT in downwind states when analyzing the maximized cost effectiveness of controls in upwind states. Several commenters also brought attention to the length of time between when 2008 ozone NAAQS good neighbor SIPs were initially due and the proposed rule in October 2020.

Response: This rule is a full remedy for the good neighbor provision for the covered upwind states for the 2008 ozone NAAQS based on EPA's analysis. The good neighbor provision does not obligate upwind states to fully resolve a downwind nonattainment or maintenance problem. CAA section 110(a)(2)(D)(i)(I) only requires that upwind states prohibit those emissions that ''contribute significantly to nonattainment'' or ''interfere with maintenance of the NAAQS.'' As such, the objective of the good neighbor provision is the elimination of upwind significant contribution or interference with maintenance. It does not require that the upwind states bear the full burden of bringing downwind states into attainment. Ultimate achievement of the NAAQS downwind is accomplished through the larger framework of the CAA, including under sections 110, 181, 182 and other provisions to attain the NAAQS. Thus, in this action, EPA must determine what amount of upwind contribution is significant (or interferes with maintenance) and require elimination of that significant contribution while avoiding overcontrol or undercontrol. *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 521–23 (2014).

Further, it is not correct to say that good neighbor obligations can only be found to be fully addressed when there is no longer any remaining air quality problem at the downwind receptors. Indeed, the Supreme Court recognized in *EME Homer City,* 572 U.S. at 521–22, that under the framework EPA has adopted, EPA could not require a state to further reduce its emissions once it is at or below the 1 percent contribution threshold at all receptors. The aim of the good neighbor provision is to eliminate significant contribution to nonattainment and interference with maintenance, not to achieve final attainment at the downwind receptor. Further, in upholding EPA's approach to defining and allocating upwind responsibility in the CSAPR, the Court in *EME Homer City* recognized the discretion EPA has in defining what constitutes ''significant'' contribution, and did not hold that obligations on upwind states must be imposed to ''maximize'' downwind attainment without consideration of any other factors. *Accord Wisconsin,* 938 F.3d at 320 (recognizing EPA's discretion to interpret ''significant contribution'').

The comments do not establish a basis for asserting that EPA's approach to defining significant contribution or interference with maintenance is unlawful or unreasonable. They do not explain what is meant by ''excessive amounts of ozone pollution,'' ''excessive upwind contributions,'' ''sufficient emission reductions,'' or ''sufficient upwind reductions.'' These comments do not inform how EPA should define significant contribution nor do they recognize that EPA has discretion to define significant contribution. The D.C. Circuit first upheld the validity of using cost as part of the method for determining ''significance'' in *Michigan* v. *EPA,* 213 F.3d 663, 675–79 (D.C. Cir. 2000). The Supreme Court upheld that same approach in *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 512–20 (2014) (''Eliminating those amounts that can cost-effectively be reduced is an efficient and equitable solution to the allocation problem the Good Neighbor Provision requires the Agency to address.''). EPA applied this approach again in the CSAPR Update, its first action to address good neighbor obligations under the 2008 ozone NAAQS. And while that action only provided a partial remedy, no party in *Wisconsin* challenged as a general matter EPA's ability to use cost-effectiveness in determining and allocating upwind responsibility. *Wisconsin* and *New York* recognized EPA's discretion to define significant

[71] Historical heat input and NO_X emissions in states covered by the CSAPR programs may be found in the ''Historical CSAPR Update Emissions and Heat Input 2000 to 2019.xlsx'' file.

contribution. *Wisconsin* v. *EPA,* 938 F.3d 303, 319–20 (D.C. Cir. 2019) (''EPA, though, possesses a measure of latitude in defining which upwind contribution 'amounts' count as 'significant[ ]' and thus must be abated.''); *New York* v. *Envtl. Prot. Agency,* 781 F. App'x 4, 7 (D.C. Cir. 2019) (''[I]n determining what constitutes a significant contribution to downwind nonattainment, the agency can consider the amount of upwind states' contributions and the cost of abating them.'').

With respect to the timing of when such reductions must be achieved, EPA agrees that ''as expeditiously as practicable'' is the first-order statutory directive. *See* CAA section 181(a)(1); *Wisconsin,* 938 F.3d at 313. EPA's approach in this rule, after determining significant contribution, implements all reductions that EPA identified as possible by the 2021 attainment date, and requires additional reductions of EGUs in later ozone seasons to the extent not possible by that date to fully eliminate significant contribution. In this case, implementing reductions any faster than the 2021 ozone season is impossible because 2020 is in the past. Commenters are incorrect to assert that EPA has unlawfully failed to require all necessary reductions by the 2021 attainment date. EPA has required those reductions that it has determined are possible by that date; EPA has also made a determination that additional reductions that are only possible after that date are nonetheless necessary to eliminate significant contribution or interference with maintenance, as EPA has interpreted those terms, and is requiring those later reductions as expeditiously as practicable. Achieving necessary reductions past the next attainment date when EPA finds it is impossible to do so beforehand is consistent with the statute and prior caselaw. *Wisconsin* and *New York* recognized these flexibilities available to EPA in acknowledging that for reasons of necessity or impossibility, EPA may deviate from the attainment schedule for downwind areas established in the Act. *Wisconsin* v. *EPA,* 938 F.3d 303, 320 (D.C. Cir. 2019). *New York* v. *EPA,* 781 F. App'x 4, 7 (D.C. Cir. 2019). Indeed, these commenters are not asserting that EPA lacks authority to require reductions beyond the attainment date, only that EPA should have required the reductions by that date. But these comments fail to establish a technical or evidentiary basis to overturn EPA's judgment that such additional reductions are not in fact possible by the 2021 attainment date.

EPA disagrees that *Wisconsin* held that it must address good neighbor obligations by the full ozone season prior to the attainment date (*i.e.,* here, 2020). The decision recognized that the agency must fully address good neighbor obligations (to the extent EPA determines possible) by the attainment date itself. 938 F.3d at 315. EPA's practice of addressing obligations by the full ozone season prior to the attainment date, while not mandated by statute or caselaw, continues to make good policy sense, because it assists downwind areas with improved three-year design values [72] used in determining whether attainment has been achieved. However, in this instance, as one commenter correctly notes, reductions in 2020 are not possible since this rule was not proposed until after the 2020 ozone season. EPA nonetheless can still meet the legal mandate to achieve those reductions that are possible by the 2021 attainment date.

Further, EPA is not relying on ''scientific uncertainty'' as a justification for not requiring reductions earlier. As explained elsewhere in this record, EPA has determined the amount of time needed for installation and operation of various control strategies. With respect to the optimization of existing SNCR controls, EPA notes that it is requiring that strategy as reflected in the final budgets by the 2021 attainment date, as explained in sections VI.B.1, C.1, and D.1.

EPA defined significant contribution in this rule based on an assessment of control alternatives under the 4-step good neighbor framework's step 3 multi-factor test. EPA's determination of what controls to require and when they can first be implemented are based on EPA's technical evaluation and application of the third step multi-factor analysis in the 4-step framework. The only ''mismatch'' that one commenter identified at the third step is no mismatch at all; it is simply the reality that some of the controls that EPA is requiring in this rule cannot be installed before the 2021 ozone season, and some controls that EPA assessed cannot be installed and operational before air quality problems are projected to resolve under the 2008 ozone NAAQS (*i.e.,* by the 2025 ozone season). These comments have not explained how EPA's evaluation of control options under that test was arbitrary or capricious.

[72] The ozone design value at a particular monitoring site is the 3-year average of the annual fourth highest daily maximum 8-hour ozone concentration at that site.

The reasons for alleged past delays in implementing ozone transport obligations is out of the scope of this action on remand. However, EPA notes that the time it has taken to get reductions in place to address interstate ozone transport is due to multiple factors, including past judicial stays of major transport rules such as the NO_X SIP Call and the CSAPR. In addition, EPA had made a determination in the CSAPR Close-out that it had fully addressed good neighbor obligations; it was not until the D.C. Circuit ruled in *Wisconsin* that the basis for this conclusion was revealed to be insufficient. The CSAPR Update has and continues to achieve upwind reductions for the 2008 ozone NAAQS. As explained elsewhere in the preamble to this action, EPA now finds it to be a full remedy for nine upwind states.

Comment: Several commenters said that the CSAPR Update was already a complete remedy with regard to the EGU sector. One commenter described EPA's response to the remand as ''unreasonable'' and its re-application of the 4-step framework as ''erroneous.'' Other commenters opined that EPA has no legal basis to require short-term EGU controls under the *Wisconsin* remand. In their opinion, *Wisconsin* found that the CSAPR Update fully eliminated significant contribution from EGUs, which they supported by quoting portions of the decision. They asserted that *Wisconsin* only authorized EPA to search for emission reductions from non-EGUs and to narrowly reconsider the CSAPR Update in terms of the statutory downwind attainment dates.

Response: The commenters are incorrect that EPA lacks a legal basis to re-assess and fully address good neighbor obligations for the covered states under the *Wisconsin* remand. As an initial matter, the CSAPR Update was, by EPA's own admissions, a partial rule. *See* 81 FR at 74521–22. The court's analysis upholding the portions of the rule in *Wisconsin* cited by these commenters was against a backdrop that the rule was only partial in nature. *See, e.g.,* 938 F.3d at 327. *Wisconsin* required EPA to provide a complete remedy by the next applicable attainment date. This was confirmed in the *New York* decision vacating the CSAPR Close-out. The D.C. Circuit found that rule violated the holding in *Wisconsin* by failing to analyze the 2021 analytic year without a sufficient showing of impossibility or necessity. To the extent that EPA had attempted to fully address the relevant obligations in the CSAPR Close-Out Rule, that action has been vacated. Therefore, on remand, EPA not only needs to use a different analytic year to

inform its analysis under the 4-step framework, but it also needs to apply that framework in order to determine what, if any, obligations must be addressed, and what emission reductions must be required.

EPA disagrees that *Wisconsin* prevents requiring additional necessary controls on EGUs. As stated in the preamble to the CSAPR Update, EPA did not view the CSAPR Update as necessarily fully eliminating significant contribution from EGUs. *See* 81 FR 74522. *Wisconsin* recognized that EPA anticipated ''further EGU reductions that are achievable after 2017'' may be necessary to completely eliminate significant contribution or interference with maintenance for the 2008 ozone NAAQS. *Wisconsin* v. *EPA,* 938 F.3d 303 (D.C. Cir. 2019) (quoting 81 FR 74522). In the present action, evaluation of a full remedy in accordance with *Wisconsin* under the 4-step framework, and particularly the step 3 multi-factor test, establishes that additional reductions from EGUs should be required in 12 of the states currently subject to the CSAPR Update. For nine other states, their continued obligations under the CSAPR Update satisfy their good neighbor obligations for the 2008 ozone NAAQS. That same analysis shows that reductions from non-EGUs are not justified under the same test.

Comment: Some commenters argued that EPA's use of cost in defining significant contribution has no statutory basis and is contrary to NAAQS attainment planning caselaw and the Supreme Court's holding in *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489 (2014) (''*EME Homer City*''), because it does not result in sufficient emission reduction for attainment and maintenance of the NAAQS. The commenter also said that even if EPA could use cost as a basis for defining significant contribution for non-attainment, the Agency could not do so for interference with maintenance. Another commenter described EPA's proposed cost threshold of $1,600 per ton as ''arbitrary'' and inconsistent with the CAA and *EME Homer City,* as this cost threshold is insufficient to enable downwind states reach attainment or maintenance. Further, commenters argued, EPA's use of cost-effectiveness as a metric at step 3 fails to identify what the ultimate goal should be, as cost-effectiveness can only be used to evaluate which way to best achieve a goal. One commenter argued that EPA should require upwind reductions so long as the downwind benefit of such reductions continues to outweigh their cost.

Response: The approach used here is materially the same approach the Agency applied in the NO_X SIP Call, the CSAPR, and in the CSAPR Update. These comments essentially seek to relitigate *EME Homer City,* as well as the D.C. Circuit's prior opinion in *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000). Contrary to the commenters' interpretation, *EME Homer City* allowed the use of cost both to define and to allocate upwind state responsibility. 572 U.S. 489, 518–520 (2014) (''The Agency, tasked with choosing which among equal ''amounts'' to eliminate, has chosen sensibly to reduce the amount easier, *i.e.,* less costly, to eradicate.''). Notably, in the CSAPR rulemaking, EPA used cost as part of a multi-factor effectiveness metric in the multi-factor test to determine the ''amount'' of upwind contribution that is ''significant'' in a very similar manner as EPA did in the CSAPR Update and now here in this action on remand. *See* 76 FR 48208, 48248–51 (Aug. 8, 2011). In the NO_X SIP Call, EPA took a similar approach. *See* 213 F.3d at 675 (''Although the dividing line was a very low threshold of contribution, in the end EPA's rule called for termination of only a subset of each state's contribution. EPA decided that the 23 'significant contributors' need only reduce their ozone *by the amount achievable with 'highly cost-effective controls.'*'') (emphasis added) (citing 63 FR at 57403).

Commenters fail to identify why an alternative method for determining ''contribution'' is compelled by the statute, or that EPA's approach is unlawful, arbitrary, or capricious. Contrary to these commenters' assertion, the good neighbor provision does not contemplate that an upwind state's obligation can only ever be resolved once a downwind receptor is fully in attainment. The Supreme Court recognized in *EME Homer City* that the 1 percent contribution threshold used at step 2 must necessarily be a stopping point in EPA's analysis because a state that contributed less than that would not be assessed for reductions at step 3 in the first place. 572 U.S. at 521. The Supreme Court in *EME Homer City* recognized that the problem of defining ''significant contribution'' in the context of a regional pollutant like ozone is inherently extremely complex. *Id.* at 514. The Court found that using cost (and specifically, a uniform cost-effectiveness threshold) to allocate the reduction obligation was both equitable and efficient. *Id.* at 519.

Further, the case law on barring use of cost considerations in the attainment planning context cited by one commenter is inapplicable. EPA has discretion to interpret significant contribution, as recognized by *Wisconsin* and *New York. Wisconsin* v. *EPA,* 938 F.3d 303, 319–20 (D.C. Cir. 2019) (''EPA, though, possesses a measure of latitude in defining which upwind contribution 'amounts' count as 'significant[ ]' and thus must be abated.''). *New York* v. *Envtl. Prot. Agency,* 781 F. App'x 4, 7 (D.C. Cir. 2019) (''[I]n determining what constitutes a significant contribution to downwind nonattainment, the agency can consider the amount of upwind states' contributions and the cost of abating them.'').

The comment that cost effectiveness does not provide an adequate basis for EPA to select the correct level of stringency misapprehends the full scope of the step 3 multi-factor analysis EPA applies in the 4-step framework. EPA's analysis at step 3 additionally considers the total amount of reductions to be achieved by a control stringency as well as the effect on air quality at downwind receptors. EPA also must take into consideration the minimum amount of time needed for controls to be installed and operational, because if an air quality problem is no longer present by the time controls could be operational, then there is no need for those controls to be required. *See* 572 U.S. at 521. Thus, it is not just the relative cost effectiveness of a control stringency but its ultimate effect on a downwind problem that informs EPA's determination of ''significance.'' [73]

[73] To some degree, these commenters may be overstating the relative importance of ''cost'' in EPA's step 3 analysis. EPA's design of cost thresholds derives from the identification of discrete types of NO_X emission control strategies. EPA then identifies a representative cost-effectiveness on a per ton basis for that technology. In the step 3 analysis, it is not the cost per ton value itself that is inherently meaningful, but rather how that cost-effectivess value relates to other control stringencies, how many emission reductions may be obtained, and how air quality is ultimately impacted. Said differently, when EPA determines not to require controls at a higher cost threshold, it is not on grounds that they are simply ''too expensive for industry.'' Further, there are always inherent uncertainties in identifying a precise cost per ton value for any particular control stringency, but this in itself does not upset EPA's ability to render an overall policy judgment based on the step 3 factors as to the level of emission reductions required. As an example, EPA explains in Section VI.D.1 why its cost thresholds for EGU control stringencies at $1,600 per ton and $1,800 per ton in this action generate essentially the same point on a cost curve for purposes of its step 3 analysis. In any case, EPA notes that the Agency's determination not to require further EGU controls than EPA identified in this action, and to a certain extent non-EGU controls, is based primarily on timing, not a determination of relative cost-effectiveness. Likewise, emission controls included in the emission budgets in this rulemaking would

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The uniform control stringency selected in this rule for EGUs compares favorably with prior transport rulemakings in terms of cost-effectiveness, overall cost, total reductions, and downwind benefits. By contrast, when EPA analyzed the best available current data on non-EGUs for potential control, EPA's analysis showed that at a comparable cost level ($2,000/ton—on a weighted average basis, rather than the 90th percentile value used as a representative marginal cost used for EGU SCR optimization, far fewer NO_X emission reductions were available and their corresponding effect on downwind receptors was much smaller, on the order of a few hundredths of a ppb.

Regarding the comment that EPA has failed to give independent effect to the requirement to prohibit emissions that interfere with maintenance of the NAAQS in other states (*i.e.,* prong 2): EPA gives effect to prong 2 through identifying receptors that may have trouble attaining the NAAQS under varying air quality and meteorological conditions. *EME Homer City* upheld EPA's approach to using cost to determine ''amounts'' with respect to both prong 1 and 2, and this is settled law. *EPA* v. *EME Homer City Generation,* 572 U.S. at 518–520. EPA's use of the term ''significant contribution'' in its analysis at the third step of the 4-step framework is applied for both prongs 1 and 2. This approach to giving effect to the ''interfere with maintenance'' prong has been upheld twice by the D.C. Circuit. *See EME Homer City,* 795 F.3d at 136; *Wisconsin,* 938 F.3d at 325–27. In effect, EPA's determination of what level of upwind contribution constitutes ''interference'' with a maintenance receptor is the same determination as what constitutes ''significant contribution'' for a nonattainment receptor. Nonetheless, this continues to give independent effect to prong 2 because EPA applies a broader definition for identifying maintenance receptors, which accounts for the possibility of problems maintaining the NAAQS under realistic potential future conditions. While EPA and others may occasionally use the language of ''significance'' as a shorthand for determinations at the third step under both prongs 1 and 2, this does not detract from the fact that EPA gives prong 2 independent effect under the 4-step framework.

likely still be included even if their representative cost levels were somewhat higher, so long as they still present a compelling result in the multi-factor test taking timing and downwind air quality impacts into account.

EPA has explained elsewhere in the record for this action why the selected control stringency selected in this rule is appropriate in light of EPA's application of the step 3 multi-factor test of the 4-step framework. To the extent commenters argue that EPA should have selected a higher cost threshold or required more reductions based on the technical data, those issues are addressed elsewhere in the record.

V. Analyzing Downwind Air Quality and Upwind-State Contributions

In this section, EPA describes the air quality modeling and analyses performed to identify nonattainment and/or maintenance receptors and evaluate interstate contributions to these receptors from individual upwind states for the 2021 analytic year. Although the air quality modeling was performed using an air quality modeling platform that covers the contiguous 48 states, the analysis to identify receptors and evaluate contributions focuses on the 21 upwind states that are the subject of this rule with respect to the 2008 ozone NAAQS. In this action, EPA is not addressing the good neighbor obligations of any other state, nor is it addressing the obligations of any state, including the 21 covered by this action, with respect to the 2015 ozone NAAQS.

The year 2021 was selected as the appropriate future analytic year for this rule because it coincides with the July 20, 2021, Serious area attainment date under the 2008 ozone NAAQS. In the CSAPR Update, EPA had aligned its analysis and implementation of emission reductions with the 2017 ozone season (ozone seasons run each year from May 1–September 30) in order to assist downwind states with timely attainment of the 2008 ozone NAAQS by the Moderate area attainment date of July 20, 2018. *See* 81 FR 74516. In order to demonstrate attainment by this deadline, states were required to rely on design values calculated using ozone season data from 2015 through 2017, since the July 20, 2018, deadline did not afford enough time for measured data of the full 2018 ozone season. Similarly, for the Serious area attainment date in 2021, states will rely on design values calculated using ozone season data from 2018 through 2020. However, it is not possible to impose emission reductions on upwind states in the 2020 ozone season, which has already passed. Reductions in the 2021 ozone season will nonetheless occur in time for the 2021 attainment date and therefore assist downwind states in achieving attainment by the July 20, 2021, attainment date, in compliance with the *Wisconsin* holding. *See Wisconsin,* 938 F.3d at 309 (the CSAPR Update was unlawful to the extent it allowed upwind states to ''continue their significant contributions to downwind air quality problems *beyond the statutory deadlines* by which downwind States must demonstrate their attainment of air quality standards'') (emphasis added). Further, EPA continues to interpret the good neighbor provision as forward-looking, based on Congress's use of the future-tense ''will'' in section 110(a)(2)(D)(i), an interpretation upheld in *Wisconsin,* 938 F.3d at 322. It would be ''anomalous,'' *id.,* for EPA to impose good neighbor obligations in 2021 and future years based solely on finding that ''significant contribution'' had existed at some time in the past.

EPA has also conducted additional analysis of remaining air quality receptors and contribution in years beyond 2021, in order to ensure a complete step 3 analysis. EPA has analyzed these later years to determine whether any additional emission reductions that are impossible to obtain by the 2021 attainment date may yet be necessary in order to fully address significant contribution. This comports with the D.C. Circuit's direction in *Wisconsin* that implementing good neighbor obligations beyond the dates established for attainment may be justified on a proper showing of impossibility and/or necessity. *See* 938 F.3d at 320. However, for purposes of EPA's initial analysis of air quality at step 1 of the 4-step framework, in accordance with *Wisconsin,* EPA has selected the 2021 ozone season, corresponding with the 2021 Serious area attainment date.

The remainder of this section includes information on: (1) The air quality modeling platform used in support of this final rule with a focus on the base year and future year base case emission inventories, (2) the method for projecting design values in 2021, and (3) the approach for calculating ozone contributions from upwind states.[74] The Agency also provides the design values for nonattainment and maintenance receptors and the predicted interstate contributions that are at or above the 1 percent of the NAAQS screening threshold. The 2016 base period and 2021, 2023, and 2028 future design values and contributions for all ozone monitoring sites are provided in the docket for this rule. The Air Quality Modeling Technical Support Document

[74] For the 2023 and 2028 modeling used in the step 3 analysis, EPA followed the same method for projecting design values and approach for calculating contributions as described for the 2021 analytic year.

(AQM TSD) in the docket for this rule contains more detailed information on the air quality modeling aspects of this rule.

A. Overview of Air Quality Modeling Platform

EPA used the 2016-based modeling platform for the air quality modeling for this final rule. This modeling platform includes 2016 base year emissions from anthropogenic and natural sources and 2016 meteorology. The platform also includes anthropogenic emission projections for 2023 and 2028. The emissions data contained in this platform were developed by EPA, Multi-Jurisdictional Organizations (MJOs), and state and local air agencies as part of the Emissions Inventory Collaborative Process. This process resulted in a common-use set of emissions data for a 2016 base year and 2023 and 2028 that can be leveraged by EPA and states for regulatory air quality modeling.[75] The air quality modeling was performed for a modeling region (*i.e.,* modeling domain) that covers the contiguous 48 states using a horizontal resolution of 12 x 12 km. EPA used the CAMx version 7beta6 for air quality modeling for both the proposed rule and this final rule.[76] Additional information on the 2016-based air quality modeling platform can be found in the AQM TSD.

B. Emission Inventories

EPA developed emission inventories for the proposed rule, including emission estimates for EGUs, non-EGU point sources, stationary nonpoint sources, onroad mobile sources, nonroad mobile sources, wildfires, prescribed fires, and biogenic emissions that are not the result of human activities. EPA's air quality modeling relies on this comprehensive set of emission inventories because emissions from multiple source categories are needed to model ambient air quality and to facilitate comparison of model outputs with ambient measurements. To prepare the emission inventories for air quality modeling, EPA processed the emission inventories using the Sparse Matrix Operator Kernel Emissions (SMOKE) Modeling System version 4.7 to produce the gridded, hourly, speciated, model-ready emissions for input to the air quality model. Additional information on the development of the emission inventories and on data sets used during the emissions modeling process are provided in the Technical Support Document (TSD) ''Preparation of Emissions Inventories for the 2016v1 North American Emissions Modeling Platform,'' hereafter known as the ''Emissions Modeling TSD.'' This TSD is available in the docket for this rule and at *https://www.epa.gov/air-emissions-modeling/2016v1-platform.*

1. Foundation Emission Inventory Data Sets

Emissions data were developed that represented the year 2016 to support air quality modeling of a base year from which future air quality could be forecasted. As noted above, EPA used the Inventory Collaborative 2016 version 1 (2016v1) Emissions Modeling Platform, released in October 2019, as the primary basis for the inventories supporting the air quality modeling. This platform was developed through a national collaborative effort between EPA and state and local agencies along with MJOs. The original starting point for the U.S. portions of the 2016 inventory was the 2014 National Emissions Inventory (NEI), version 2 (2014NEIv2), although all of the inventory sectors were updated to better represent the year 2016 through the incorporation of 2016-specific state and local data along with nationally applied adjustment methods. The future base case inventories developed for 2023 and 2028 represent projected changes in activity data and predicted emission reductions from on-the-books actions, planned emission control installations, and promulgated federal measures that affect anthropogenic emissions.[77]

2. Development of Emission Inventories for EGUs

Annual NO_X and SO_2 emissions for EGUs in the 2016 base year inventory are based primarily on data from continuous emission monitoring systems (CEMS) and other monitoring systems allowed for use by qualifying units under 40 CFR part 75, with other EGU pollutants estimated using emission factors and annual heat input data reported to EPA. For EGUs not reporting under part 75, EPA used the most recent data submitted to the NEI by the states. Emissions data for sources that did not have data provided for the year 2016 were pulled forward from data submitted for 2014. The Air Emissions Reporting Rule, (*80 FR 8787* February 19, 2015), requires that Type A point sources large enough to meet or exceed specific thresholds for emissions be reported to EPA every year, while the smaller Type B point sources must only be reported to EPA every three years. For more information on how the 2016 EGU emissions data were developed and prepared for air quality modeling, see the Emissions Modeling TSD.

EPA projected future 2023 and 2028 baseline EGU emissions using the version 6—January 2020 reference case of the Integrated Planning Model (IPM).[78] [79] IPM, developed by ICF Consulting, is a state-of-the-art, peer-reviewed, multi-regional, dynamic, deterministic linear programming model of the contiguous U.S. electric power sector. It provides forecasts of least cost capacity expansion, electricity dispatch, and emission control strategies while meeting energy demand and environmental, transmission, dispatch, and reliability constraints. EPA has used IPM for over two decades to better understand power sector behavior under future business-as-usual conditions and to evaluate the economic and emission impacts of prospective environmental policies. The model is designed to reflect electricity markets as accurately as possible. EPA uses the best available information from utilities, industry experts, gas and coal market experts, financial institutions, and government statistics as the basis for the detailed power sector modeling in IPM. The model documentation provides additional information on the assumptions discussed here as well as all other model assumptions and inputs.[80]

The IPM version 6—January 2020 reference base case accounts for updated federal and state environmental regulations, committed EGU retirements and new builds, and technology cost and performance assumptions as of late 2019. This projected base case accounts for the effects of the finalized Mercury and Air Toxics Standards rule, the CSAPR and the CSAPR Update, New Source Review settlements, and other on-the-books federal and state rules through 2019[81] impacting SO_2, NO_X,

[75] *http://views.cira.colostate.edu/wiki/wiki/9169.*

[76] EPA did not receive any comments on the use of CAMx version 7beta6 for the air quality modeling for this rule.

[77] Biogenic emissions and emissions from wildfires and prescribed fires were held constant between 2016 and the future years because (1) these emissions are tied to the 2016 meteorological conditions and (2) the focus of this rule is on the contribution from anthropogenic emissions to projected ozone nonattainment and maintenance.

[78] *https://www.epa.gov/powersectormodeling.*

[79] The 2016v1 platform released in October 2019 used the May 2019 reference case. The January 2020 IPM reference case is a later version than what was originally released with 2016v1.

[80] Detailed information and documentation of EPA's Base Case, including all the underlying assumptions, data sources, and architecture parameters can be found on EPA's website at: *www.epa.gov/airmarkets/powersectormodeling.*

[81] For any specific version of IPM there is a cutoff date after which it is no longer possible to incorporate updates into the input databases. For

Continued

directly emitted particulate matter, and CO_2, and final actions EPA has taken to implement the Regional Haze Rule.

Additional 2021 EGU emissions baseline levels were developed through engineering analytics as an alternative approach that did not involve IPM. EPA developed this inventory for use in step 3 of this final rule, where it determines emission reduction potential and corresponding emission budgets. IPM includes optimization and perfect foresight in solving for least cost dispatch. Given that this final rule will likely become effective either immediately prior to or slightly after the start of the 2021 ozone season, EPA adopted a similar approach to the CSAPR Update where it relied on IPM in a relative way in step 3 to avoid overstating optimization and dispatch decisions that were not possible in the short time frame. EPA does this by using the difference in emission rate observed between IPM runs with and without the cost threshold applied, rather than using absolute values. In both the CSAPR Update and in this rule at step 3, EPA complemented that projected IPM EGU outlook with historical (*e.g.,* engineering analytics) perspective based on historical data that only factors in known changes to the fleet. This 2021 engineering analytics data set is described in more detail in the Ozone Transport Policy Analysis Final Rule TSD.

3. Development of Emission Inventories for Non-EGU Point Sources

The non-EGU point source emissions in the 2016 base case inventory match those in the 2016v1 platform. Some non-EGU point source emissions were based on data submitted for 2016, others were projected from 2014 to 2016, and the emissions for remaining small sources were kept at 2014 levels. Prior to air quality modeling, the emission inventories were processed into a format that is appropriate for the air quality model to use. Projection factors and percent reductions in this final rule reflect comments received as a result of the Inventory Collaborative development process, along with emission reductions due to national and local rules, control programs, plant closures, consent decrees, and settlements. Reductions from several Maximum Achievable Control Technology and National Emission Standards for Hazardous Air Pollutants (NESHAP) standards are included. Projection approaches for corn ethanol and biodiesel plants, refineries and upstream impacts represent requirements pursuant to the Energy Independence and Security Act of 2007 (EISA). Details on the development and processing of the non-EGU emissions inventories for 2016, 2023, and 2028 are available in the Emissions Modeling TSD.

For aircraft emissions at airports, the emissions used were based on adjustments to emissions in the 2017 NEI (see *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data* for data and a TSD). EPA developed and applied factors to adjust the 2017 emissions to 2016, 2023, and 2028 based on activity growth projected by the Federal Aviation Administration Terminal Area Forecast [82] system, published in 2018.

Emissions at rail yards were represented as non-EGU point sources. The 2016 rail yard emissions are largely consistent with the 2017 NEI rail yard emissions. The 2016, 2023, and 2028 rail yard emissions were developed through the Inventory Collaborative process. The rail yard emissions were interpolated from the 2016 and 2023 emissions. Class I rail yard emissions were projected using the Energy Information Administration's 2019 Annual Energy Outlook (AEO) freight rail energy use growth rate projections for 2016, 2023, and 2028 with the fleet mix assumed to be constant throughout the period.

Point source oil and gas emissions for 2016 were based on the 2016v1 point inventory, while nonpoint oil and gas emissions were primarily based on a run of EPA Oil and Gas Tool for the year 2016. The 2016 oil and gas inventories were projected to 2023 and 2028 using regional projection factors by product type based on AEO 2019 projections. NO_X and VOC reductions that are co-benefits to the NESHAP and New Source Performance Standards (NSPS) for Stationary Reciprocating Internal Combustion Engines (RICE) are reflected for select source categories. In addition, Natural Gas Turbines and Process Heaters NSPS NO_X controls and NSPS Oil and Gas VOC controls are reflected for select source categories. Additional information on the development and modeling of the oil and gas emission inventories can be found in the Emissions Modeling TSD.

4. Development of Emission Inventories for Onroad Mobile Sources

Onroad mobile sources include exhaust, evaporative, and brake and tire wear emissions from vehicles that drive on roads, parked vehicles, and vehicle refueling. Emissions from vehicles using regular gasoline, high ethanol gasoline, diesel fuel, and electric vehicles were represented, along with buses that used compressed natural gas. EPA developed the onroad mobile source emissions for states other than California using EPA's Motor Vehicle Emissions Simulator (MOVES) 2014b. MOVES2014b was used with inputs provided by state and local agencies, where available, in combination with nationally available data sets. Onroad emissions for the platform were developed based on emissions factors output from MOVES2014b run for the year 2016, coupled with activity data (*e.g.,* vehicle miles traveled and vehicle populations) representing the year 2016. The 2016 activity data were provided by some state and local agencies, and the remaining activity data were derived from the 2014NEIv2. The onroad emissions were computed within SMOKE by multiplying emission factors developed using MOVES with the appropriate activity data. Onroad mobile source emissions for California were consistent with the emissions provided by the state.

The future-year emissions for onroad mobile sources represent all national control programs known at the time of modeling except for the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles (HDGHG)—Phase 2 [83] and the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule.[84] Finalized rules incorporated into the onroad mobile source emissions include: Tier 3 Standards (March 2014), the Light-Duty Greenhouse Gas Rule (March 2013), Heavy (and Medium)-Duty Greenhouse Gas Rule (August 2011), the Renewable Fuel Standard (February 2010), the Light Duty Greenhouse Gas Rule (April 2010), the Corporate-Average Fuel Economy standards for 2008–2011 (April 2010), the 2007 Onroad Heavy-Duty Rule (February 2009), and the Final Mobile Source Air Toxics Rule (MSAT2) (February 2007). Estimates of the impacts of rules that were in effect in 2016 are included in the 2016 base year

version 6—January reference case, that cutoff date was November 2019.

[82] *https://www.faa.gov/data_research/aviation/taf/.*

[83] The effect of the HDGHG Phase 2 rule on criteria pollutants is estimated in Table 5–48 of the Regulatory Impact Analysis, available from *https://nepis.epa.gov/Exe/ZyPDF.cgi/P100P7NS.PDF?Dockey=P100P7NS.PDF.*

[84] Information on the SAFE vehicles rule is available from *https://www.epa.gov/regulations-emissions-vehicles-and-engines/safer-affordable-fuel-efficient-safe-vehicles-final-rule.* Preliminary analysis by the Office of Transportation and Air Quality of the impact of this rule on criteria pollutants show impacts of less than 1 percent for VOC and no impact for NO_X.

emissions at a level that corresponds to the extent to which each rule had penetrated into the fleet and fuel supply by the year 2016. Local control programs such as the California LEV III program are included in the onroad mobile source emissions. The future year onroad emissions reflect projected changes to fuel properties and usage. MOVES was run for the years 2023 and 2028 to generate the emissions factors relevant to those years. Future year activity data for onroad mobile sources were provided by some state and local agencies, and otherwise were projected to 2023 and 2028 using AEO 2019-based factors. The future year emissions were computed within SMOKE by multiplying the future year emission factors developed using MOVES with the year-specific activity data. Additional information on the approach for generating the onroad mobile source emissions is available in the Emissions Modeling TSD.

5. Development of Emission Inventories for Commercial Marine Vessels

The commercial marine vessel (CMV) emissions in the 2016 base case emission inventory for this rule were based on those in the 2017 NEI. Factors were then applied to adjust the 2017 NEI emissions backward to represent emissions for the year 2016. The CMV emissions reflect reductions associated with the Emissions Control Area proposal to the International Maritime Organization control strategy (EPA–420–F–10–041, August 2010); reductions of NO_X, VOC, and CO emissions for new C3 engines that went into effect in 2011; and fuel sulfur limits that went into effect prior to 2016. The cumulative impacts of these rules through 2023 and 2028 were incorporated into the projected emissions for CMV sources. The CMV emissions were split into emissions inventories from the larger category 3 (C3) engines, and those from the smaller category 1 and 2 (C1C2) engines. Some minor adjustments to the CMV emissions were implemented following the October 2019 2016v1 release. These updated CMV inventories were released publicly by February, 2020.[85]

6. Development of Emission Inventories for Other Nonroad Mobile Sources

Nonroad mobile source emission inventories (other than CMV, locomotive, and aircraft emissions) were developed from monthly, county, and process level emissions output from MOVES2014b. MOVES2014b included important updates to nonroad engine population growth rates. Types of nonroad equipment include recreational vehicles, pleasure craft, and construction, agricultural, mining, and lawn and garden equipment. State-submitted emissions data for nonroad sources were used for California.

EPA also ran MOVES2014b for 2023 and 2028 to prepare nonroad mobile emissions inventories for future years. The nonroad mobile emission control programs include reductions to locomotives, diesel engines, and recreational marine engines, along with standards for fuel sulfur content and evaporative emissions. A comprehensive list of control programs included for mobile sources is available in the Emissions Modeling TSD.

Line haul locomotives are also considered a type of nonroad mobile source but the emissions inventories for locomotives were not developed using MOVES2014b. Year 2016 locomotive emissions were developed through the Inventory Collaborative and are mostly consistent with those in the 2017 NEI. The projected locomotive emissions for 2023 and 2028 were developed by applying factors to the base year emissions using activity data based on 2018 AEO freight rail energy use growth rate projections and emission rates adjusted to account for recent historical trends.

7. Development of Emission Inventories for Nonpoint Sources

The emissions for stationary nonpoint sources in our 2016 base case emission inventory are largely consistent with those in the 2014NEIv2, although some were adjusted to more closely reflect year 2016 using factors based on changes to human population from 2014 to 2016. Stationary nonpoint sources include evaporative sources, consumer products, fuel combustion that is not captured by point sources, agricultural livestock, agricultural fertilizer, residential wood combustion, fugitive dust, and oil and gas sources. For more information on the nonpoint sources in the 2016 base case inventory, see the Emissions Modeling TSD and the 2014NEIv2 TSD.

Where states provided the Inventory Collaborative information about projected control measures or changes in nonpoint source emissions, those inputs were incorporated into the projected inventories for 2023 and 2028. Adjustments for state fuel sulfur content rules for fuel oil in the Northeast were included. Projected emissions for portable fuel containers reflect the impact of projection factors required by the final MSAT2 rule and the EISA, including updates to cellulosic ethanol plants, ethanol transport working losses, and ethanol distribution vapor losses.

For 2016, nonpoint oil and gas emissions inventories were developed based on a run of EPA Oil and Gas Tool for 2016. To develop the future year inventories, regional projection factors for nonpoint oil and gas sources were developed by product type based on AEO 2019 projections to 2023 and 2028. Estimates of criteria air pollutant (CAP) co-benefit reductions resulting from the NESHAP for RICE and NSPS rules and Oil and Gas NSPS VOC controls for select source categories were included. Additional details on the application of these rules and projections for nonpoint sources are available in the Emissions Modeling TSD. EPA received comments on the emissions inventories used in the proposed rule. These comments and EPA's responses are provided below and in the RTC.

Comment: EPA received comments that contend that the Agency did not include emission reductions from all ''on the books'' control programs in certain states. These commenters say that monitoring sites that were identified as nonattainment and/or maintenance receptors might not be receptors if the Agency had accounted for the impacts of all control programs.[86]

Response: The emissions inventories used for the step 1 and step 2 air quality modeling of 2023 and 2028 were developed through a collaborative process through which input from state and local agencies and multijurisdictional organizations was solicited and accepted. For point sources, the 2016 inventories were derived from state and local submissions to the 2016 NEI as required by the Air Emissions Reporting Rule see 80 FR 8787 (February 19, 2015). Any rules promulgated by 2016 that would have impacted emissions in the year 2016 would be included in those inventories. EPA then accounted for known changes in those inventories that would occur by 2023 and 2028 using EPA projection methods along with stakeholder-developed information. The Midatlantic Regional Air Management Association (MARAMA) worked with their member states and Ozone Transport Commission (OTC) states to develop projection and control factors for the years 2023 and 2028. These factors were provided to EPA in May

[85] See 2016emissions, 2023 emissions, and 2028 emissions under *ftp://newftp.epa.gov/air/emismod/2016/v1/*.

[86] For emissions sectors other than EGUs, EPA received only a limited set of comments on the base year and projected emissions inventories. Comments on emission inventories are addressed elsewhere in this document and in the RTC.

2019 and reflect rules impacting nonpoint sources that were promulgated prior to 2019. Through the Inventory Collaborative process, the inventories used for modeling included the ''on the books'' control programs that were identified by EPA and the state and multijurisdictional organization (MJO) partners such as MARAMA that provided inputs to the collaborative inventories. Rules related to emissions for sources other than EGUs promulgated in 2019 or later following the completion of the inventories for those sources are not included in the modeling for this rule.

The commenter has listed multiple pages of various state-level NO_X and VOC control programs and regulations, promulgated over multiple decades. The commenter did not provide quantitative information or data to support their claim that EPA failed to include the control programs cited by the commenter in the emissions inventories used to support the proposed rule, what the effect would be had they been included or characterized differently, and whether the effect would have changed any of the regulatory outcomes in EPA's analysis. This comment is further addressed in the RTC.

Comment: EPA received comment suggesting changes to its EGU emissions inventory used in its step 1 and step 2 evaluations based on more recent data.

Response: EPA is not changing the emissions inventory derived from its IPM modeling that incorporated the latest data at the time of execution in January of 2020 used at step 1 and step 2 of the 4-step framework. However, both in the proposed rule and at final, EPA reaffirmed its step 1 and step 2 findings using an updated/alternative EGU emissions inventory from the engineering analytics tool used in step 3 and discussed in the Ozone Transport Policy Analysis Final Rule TSD. This tool reflects known changes (*e.g.,* retirements and new builds) applied to historical data to estimate future year EGU emissions. It represents alternative EGU emissions inventory perspective as it does not factor in model-projected changes. Moreover, it incorporates the latest available data and commenter input regarding any fleet changes. EPA, in the proposed and final rule, uses this alternative inventory in conjunction with its air quality assessment tool (AQAT) to estimate air quality impacts and upwind state contributions. Both in the proposed rule and final, this alternative emissions inventory and subsequent AQAT sensitivity analysis led to the same step 1 and step 2 findings as the IPM-based EGU emissions inventory and related CAMx modeling results. That is, EPA has examined a range of EGU inventories using different future year projections and incorporating the latest available data and commenter input. Across this range of EGU emission inventory estimates, EPA reaches the same conclusion for step 1 and step 2 downwind receptors and upwind linkages. Therefore, EPA's EGU emission inventories and corresponding step 1 and step 2 analytic findings have been robustly examined, tested across a range of assumptions, and are robust to a variety of assumptions, including the unit updates suggested by the commenter. For a complete unit-by-unit inventory of all EGUs included in the future year baseline for the engineering analytic tool, see the Ozone Transport Policy Analysis Final Rule TSD; Appendix A. The data in this Appendix reflect future unit level operating status taking into account retirement and new build announcements from both commenter input and the latest EIA Form 860 monthly (October 2020) available.

C. Air Quality Modeling and Analyses To Identify Nonattainment and Maintenance Receptors

In this section the Agency describes the air quality modeling and analyses performed in Step 1 to identify locations where the Agency expects there to be nonattainment or maintenance receptors for the 2008 8-hour ozone NAAQS in the 2021 analytic future year. Where EPA's analysis shows that an area or site does not fall under the definition of a nonattainment or maintenance receptor in 2021, that site is excluded from further analysis under EPA's good neighbor framework.

In this final rule, EPA is not reopening the approach used in the CSAPR Update to identify nonattainment and maintenance receptors. *Wisconsin* upheld EPA's approach to identifying nonattainment and maintenance receptors against specific challenges. *See* 938 F.3d at 325–27.[87] As this action is taken in response to the *Wisconsin* remand and to complete the good neighbor obligations that were partially addressed in the CSAPR Update, it is entirely appropriate to continue to apply the same approach to identifying receptors to fully address the outstanding obligations as EPA took in partially addressing them. Indeed, to do otherwise would be anomalous and could lead to inconsistent treatment of states under the 4-step framework for purposes of the 2008 ozone NAAQS. However, as an aid to understanding EPA's approach to identifying receptors, a summary of this approach follows.

EPA's approach gives independent effect to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina*.[88] Further, in its decision on the remand of the CSAPR from the Supreme Court in the *EME Homer City* case, the D.C. Circuit confirmed that EPA's approach to identifying maintenance receptors in the CSAPR comported with the court's prior instruction to give independent meaning to the ''interfere with maintenance'' prong in the good neighbor provision. *EME Homer City II,* 795 F.3d at 136.

In the CSAPR Update, EPA identified nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the NO_X SIP Call and CAIR, where EPA defined nonattainment receptors as those areas that both currently monitor nonattainment and that EPA projects will be in nonattainment in the future compliance year.[89]

The Agency explained in the NO_X SIP Call and CAIR and then reaffirmed in the CSAPR Update that EPA has the most confidence in our projections of nonattainment for those counties that also measure nonattainment for the most recent period of available ambient data. EPA separately identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value

[87] The Court's holding rested in part on the partial nature of the CSAPR Update, *id.* at 327, and rejected the remainder of the challenge to EPA's treatment of maintenance receptors because petitioners in the case failed to establish actual over-control. Here, EPA has also conducted a rigorous overcontrol analysis showing that this action does not result in overcontrol. *See* Ozone Policy Analysis Final Rule TSD for details.

[88] 531 F.3d at 910–911 (holding that EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

[89] *See* 63 FR 57375, 57377 (October 27, 1998); 70 FR 25241(January 14, 2005). *See also North Carolina,* 531 F.3d at 913–914 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

over the relevant period. EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.,* ozone conducive meteorology). EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

Therefore, applying this methodology in this final rule, EPA assessed the magnitude of the maximum projected design value for 2021 at each receptor in relation to the 2008 ozone NAAQS and, where such a value exceeds the NAAQS, EPA determined that receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in the CSAPR and upheld by the DC Circuit in *EME Homer City II.*[90] That is, monitoring sites with a maximum design value that exceeds the NAAQS are projected to have a maintenance problem in 2021.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, EPA often uses the term ''maintenance-only'' to refer to receptors that are not also nonattainment receptors. Consistent with the methodology described above, monitoring sites with a projected maximum design value that exceeds the NAAQS, but with a projected average design value that is below the NAAQS, are identified as maintenance-only receptors. In addition, those sites that are currently measuring ozone concentrations below the level of the applicable NAAQS, but are projected to be nonattainment based on the average design value and that, by definition, are projected to have a maximum design value above the standard are also identified as maintenance-only receptors.

As described above in section V.B., EPA is using the 2016 and 2023 base case emissions developed under the EPA/MJO/state collaborative project as the primary source for base year and 2023 future year emissions data for this final rule. Because this platform does not include emissions for 2021, EPA developed an interpolation technique based on modeling for 2023 and measured ozone data to determine ozone concentrations for 2021. To estimate average and maximum design values for 2021, EPA first performed air quality modeling for 2016 and 2023 to obtain design values in 2023. The 2023 design values were then coupled with the corresponding 2016 measured design values to estimate design values in 2021 using the interpolation technique described below.

Consistent with EPA's modeling guidance, the 2016 and 2023 air quality modeling results were used in a ''relative'' sense to project design values for 2023. That is, the ratios of future year model predictions to base year model predictions are used to adjust ambient ozone design values up or down depending on the relative (percent) change in model predictions for each location. The modeling guidance recommends using measured ozone concentrations for the 5-year period centered on the base year as the air quality data starting point for future year projections. This average design value is used to dampen the effects of inter-annual variability in meteorology on ozone concentrations and to provide a reasonable projection of future air quality at the receptor under ''average'' conditions. In addition, the Agency calculated maximum design values from within the 5-year base period to represent conditions when meteorology is more favorable than average for ozone formation. Because the base year for the air quality modeling used in this final rule is 2016, the base period 2014–2018 ambient ozone design value data was used in order to project average and maximum design values in 2023.

The ozone predictions from the 2016 and 2023 air quality model simulations were used to project 2014–2018 average and maximum ozone design values to 2023 using an approach similar to the approach in EPA's guidance for attainment demonstration modeling. This guidance recommends using model predictions from the ''3 x 3'' array of grid cells[91] surrounding the location of the monitoring site to calculate a Relative Response Factor (RRF) for that site.[92] The 2014–2018 average and maximum design values were multiplied by the RRF to project each of these design values to 2023. In this manner, the projected design values are grounded in monitored data, and not the absolute model-predicted 2023 concentrations. In light of comments on the Notice of Data Availability (82 FR 1733; January 6, 2017) and other analyses, EPA also projected 2023 design values based on a modified version of the ''3 x 3'' approach for those monitoring sites located in coastal areas. In this alternative approach, EPA eliminated from the RRF calculations the modeling data in those grid cells that are dominated by water (*i.e.,* more than 50 percent of the area in the grid cell is water) and that do not contain a monitoring site (*i.e.,* if a grid cell is more than 50 percent water but contains an air quality monitor, that cell would remain in the calculation). The choice of more than 50 percent of the grid cell area as water as the criteria for identifying overwater grid cells is based on the treatment of land use in the Weather Research and Forecasting model (WRF).[93] Specifically, in the WRF meteorological model those grid cells that are greater than 50 percent overwater are treated as being 100 percent overwater. In such cases the meteorological conditions in the entire grid cell reflect the vertical mixing and winds over water, even if part of the grid cell also happens to be over land with land-based emissions, as can often be the case for coastal areas. Overlaying land-based emissions with overwater meteorology may be representative of conditions at coastal monitors during times of on-shore flow associated with synoptic conditions and/or sea-breeze or lake-breeze wind flows. But there may be other times, particularly with off-shore wind flow when vertical mixing of land-based emissions may be too limited due to the presence of overwater meteorology. Thus, for our modeling EPA calculated 2023 projected average and maximum design values at individual monitoring sites based on both the ''3 x 3'' approach as well as the alternative approach that eliminates overwater cells in the RRF calculation

[90] *See* 795 F.3d at 136.

[91] As noted above, each model grid cell is 12 x 12 km.

[92] The RRF represents the change in ozone based on emission changes at a given site. In order to calculate the RRF, EPA's modeling guidance recommends selecting the 10 highest ozone days in an ozone season at any given monitor in the base year, noting which of the grid cells in the 3x3 array experienced the highest ozone concentrations in the base year, and averaging those ten highest concentrations. The model is then run using the projected year emissions, in this case 2023, with all other model variables held constant. Ozone concentrations from the same ten days, in the same ten grid cells, are then averaged. The fractional change between the base year (2011 model run) averaged ozone concentrations and the future year (2023 model run) averaged ozone concentrations represents the relative response factor.

[93] *https://www.mmm.ucar.edu/weather-research-and-forecasting-model.*

for near-coastal areas (*i.e.,* ''no water'' approach).

The 2023 average and maximum design values for both the ''3 x 3'' and ''no water'' approaches were then paired with the corresponding base period measured design values at each ozone monitoring site. Design values for 2021 for both approaches were calculated by linearly interpolating between the 2016 base period and 2023 projected values.[94] The steps in the interpolation process for estimating 2021 average and maximum design values are as follows:

(1) Calculate the ppb change in design values between the 2016 base period and 2023;

(2) Divide the ppb change by 7 to calculate the ppb change per year over the 7-year period between 2016 and 2023;

(3) Multiply the ppb per year value by 5 to calculate the ppb change in design values over the 5-year period between 2016 and 2021;

(4) Subtract the ppb change between 2016 to 2021 from the 2016 design values to produce the design values for 2021.

The projected 2021 and 2023 design values using both the ''3 x 3'' and ''no-water'' approaches are provided in the AQM TSD.[95] For this final rule, EPA is relying upon design values based on the ''no water'' approach for identifying nonattainment and maintenance receptors.

Consistent with the truncation and rounding procedures for the 8-hour ozone NAAQS, the projected design values are truncated to integers in units of ppb.[96] Therefore, projected design values that are greater than or equal to 76 ppb are considered to be violating the 2008 ozone NAAQS. For those sites that are projected to be violating the NAAQS based on the average design values in 2021, the Agency examined the design values for 2019, which are the most recent certified measured ozone design values at the time of this action. As noted above, the Agency identified nonattainment receptors in this rulemaking as those sites that are violating the NAAQS based on current measured air quality and also have projected average design values of 76 ppb or greater. Maintenance-only receptors include both (1) those sites with projected average design values above the NAAQS that are currently measuring clean data and (2) those sites with projected average design values below the level of the NAAQS, but with projected maximum design values of 76 ppb or greater. In addition to the maintenance-only receptors, the 2021 ozone nonattainment receptors are also maintenance receptors because the maximum design values for each of these sites is always greater than or equal to the average design value. The monitoring sites that the Agency projects to be nonattainment and maintenance receptors for the ozone NAAQS in the 2021 base case are used for assessing the contribution of emissions in upwind states to downwind nonattainment and maintenance of ozone NAAQS as part of this action.

Table V.C–1 contains the 2014–2018 base period average and maximum 8-hour ozone design values, the 2021 base case average and maximum design values,[97] and the 2019 design values for the two sites that are projected to be nonattainment receptors in 2021 and the two sites that are projected to be maintenance-only receptors in 2021.[98] The design values for all monitoring sites in the U.S. are provided in the docket for this rule. Additional details on the approach for projecting average and maximum design values are provided in the AQM TSD.

TABLE V.C–1—AVERAGE AND MAXIMUM 2014–2018 AND 2021 BASE CASE 8-HOUR OZONE DESIGN VALUES AND 2019 PRELIMINARY DESIGN VALUES (PPB) AT PROJECTED NONATTAINMENT AND MAINTENANCE-ONLY SITES

Monitor ID	State	Site	Average design value 2014–2018	Maximum design value 2014–2018	Average design value 2021	Maximum design value 2021	2019 Design value
Nonattainment Receptors							
090013007	CT	Stratford	82.0	83	76.5	77.4	82
090019003	CT	Westport	82.7	83	78.5	78.8	82
Maintenance-Only Receptors							
090099002	CT	Madison	79.7	82	73.9	76.1	82
482010024	TX	Houston	79.3	81	75.5	77.1	81

Comment: Some commenters said that EPA's interpolation method for determining design values in 2021 is flawed because (1) the method incorrectly assumes that ozone precursor emissions in all source sectors in all states change at an equal rate between 2016 and 2023, (2) linearly interpolated EGU emissions for 2021 overstate EPA's IPM-predicted EGU emissions for 2021, and (3) the method does not account for the non-linear

[94] EPA examined the 2019 design values as a way to support the set of monitoring sites that were identified as receptors based on the 2021 interpolated design values. The outcome of this analysis was that each of the five receptors in 2021 had 2019 measured design values that exceeded the 2008 NAAQS. In addition, there are four other monitoring sites in the eastern U.S. that are not projected to be receptors in 2021, but that have 2019 design values that exceeded the NAAQS. Because the measured design values at these sites are only 1 or 2 ppb above the NAAQS, it is reasonable to assume that these four sites will be clean by 2021—which is consistent with the projections for these monitoring sites. Thus, the analysis of 2019 measured data and 2021 projections provides confidence in the approach for identifying nonattainment/maintenance receptors in 2021.

[95] Based on the 2021 design values, there are 129 monitoring sites that have different design values based on the ''3 x 3'' approach vs the ''no-water'' approach. For these 129 monitoring sites, the average difference is 0.41 ppb and the median difference is 0.28 ppb. The average and median percent differences between the ''3 x 3'' and ''no-water'' design values at these 129 monitoring sites are 0.65 percent and 0.52 percent, respectively. Thus, there is not much difference in the design values between these two approaches.

[96] 40 CFR part 50, Appendix P to Part 50—Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

[97] The design values for 2021 in this table are based on the ''no water'' approach.

[98] Using design values from the ''3 x 3'' approach does not change the total *number* of receptors in 2021. However, with the ''3 x 3'' approach the maintenance-only receptor in New Haven County, CT has a projected maximum design value of 75.5 ppb and would, therefore, not be a receptor using this approach. In contrast, monitoring site 090010017 in Fairfield County, CT has projected average and maximum design value of 75.7 and 76.3 ppb, respectively, with the ''3 x 3'' approach and would, therefore, be a maintenance-only receptor with this approach.

response of ozone to emissions changes. These commenters say that EPA should have developed a 2021 specific emissions inventory or at a minimum developed an interpolated 2021 emission inventory and then rerun the photochemical model to account for the reactivity of ozone formation from the distribution of ozone precursor emissions. The commenters contend that failing to take this step, EPA has introduced significant uncertainty into the air quality projections of the proposed rule and potentially subjected multiple upwind states to unnecessary additional control requirements.

Response: As an initial matter, there is no legal obligation for EPA to directly model the selected analytic year, here 2021, in order to make regulatory determinations within the 4-step good neighbor framework. Given the limited amount of time EPA had to complete this rulemaking in order to meet the court-ordered March 15 deadline, EPA reasonably chose to use existing air quality modeling and contribution information to derive an appropriately reliable projection of air quality conditions and contributions in 2021. The Supreme Court recognized in *EME Homer City* that it is not possible to perfectly account for all factors that will affect downwind air quality problems in a future year. Regulators, the Court noted, ''must account for the vagaries of the wind'' and in assigning upwind responsibility face a ''thorny causation problem.'' 572 U.S. 489, 497, 514. EPA's ultimate task is not to achieve a perfect understanding of atmospheric conditions in some future year, but ''to quantify the amount of upwind gases . . . that must be reduced to enable downwind states to keep their levels of ozone . . . in check. *Id.* 497. *See also EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 135–36 (''We will not invalidate EPA's predictions solely because there might be discrepancies between those predictions and the real world. . . . [A] model is meant to simplify reality in order to make it tractable.'').

EPA continues to view the interpolation analysis presented at proposal as sufficiently reliable for purposes of the regulatory determinations made in this rulemaking. Commenters assert that it is *possible* EPA may have found certain upwind state linkages not to exist had EPA taken a different approach to developing its projections for 2021. But no commenter has established an actual instance of overcontrol, which the courts have held must be clearly established through as-applied challenges. *See Wisconsin,* 938 F.3d at 325 (''[T]he Supreme Court has made clear . . . that the way to contest instances of over-control is not through generalized claims that EPA's methodology would lead to over-control, but rather through a ''particularized, as-applied challenge.'' '') (quoting *EME Homer City,* 795 F.3d at 137).

Nonetheless, in consideration of these comments, EPA has performed additional analysis, which confirms the regulatory determinations EPA proposed and is now finalizing. EPA was able to construct an emissions inventory for 2021, using available data and the same approach as EPA used to develop projection inventories for 2023 and 2028. Details on the construct of the 2021 emissions are provided in the Emissions Modeling TSD. There was, however, insufficient time to perform air quality modeling using this newly constructed 2021 inventory. Instead EPA used the Air Quality Assessment Tool (AQAT) to perform a sensitivity analysis to determine whether there would be any change in the outcome of this rule if the projection of 2021 air quality were based on projected 2021 emissions rather than EPA's interpolation method, as described above. In brief, AQAT uses the results of existing base year and future year air quality modeling as part of an interpolation technique to estimate ozone design values and contributions for analytic years that are not modeled as well as to analyze the air quality impacts of control scenarios in step 3 of the 4-step transport framework. AQAT is calibrated using model simulations to account for the non-linearity response of ozone to emissions changes. As noted by the commenter, EPA's interpolation approach inherently assumes that the relative change in emissions between 2016 and 2023 is the same across all states. Because this application of AQAT considered 2021 state level emissions on a state-by-state basis, the analysis accounted for any state-to-state differences in the change in emissions between 2016 and 2023. As part of this sensitivity analysis EPA coupled the 2021 emissions and 2023 model-predicted ozone design values and contributions to estimate design values and contributions in 2021. EPA also used the 2021 emissions in AQAT to create a more-refined interpolated 2022 emission inventory. EPA then used the AQAT to examine the effects of this refined 2022 emission inventory on ozone design values and contributions. The results indicate that any changes in the nonattainment or maintenance status of individual receptors using 2021 and 2022 projected emissions would not affect which upwind states significantly contribute to nonattainment and/or interfere with maintenance of the 2008 NAAQS in another state.[99] Details on AQAT and this sensitivity analysis can be found in the Ozone Policy Analysis Final Rule TSD.

Comment: Other commenters claim that there is a disconnect between EPA's projected 2021 design values and current ozone monitoring data. These commenters said that EPA should give priority to monitored data over modeled data when evaluating which areas need transport obligations resolved. Specifically, one commenter performed an analysis to estimate 2021 design values by first estimating a fourth high maximum daily average 8-hour (MDA8) ozone concentration in 2021 based on the four-year average of the measured fourth high values during the period 2017 through 2020 and second, calculating the 2021 design value as the average of the measured fourth high value in 2019, the preliminary fourth high value in 2020 and the estimated fourth high value in 2021.[100] Another commenter performed a statistical linear regression analysis of the fourth highest measured values for each of three time periods: 2012 through 2020, 2014 through 2020, and 2016 through 2020 to estimate fourth highest values in 2021 that would result in nonattainment in 2021 at individual monitoring sites. This commenter said that an assessment of actual ambient monitor data, such as the analysis performed by this commenter, should be given as much weight, if not more, in identifying receptors in 2021 as the modeling-based analysis performed by EPA. Both commenters said that the results of their analyses support EPA's finding that the four monitoring sites identified in Table V.C–1, above will be receptors in 2021. However, both commenters claim that the Madison, Connecticut monitoring site 090099002 will be a nonattainment receptor, whereas EPA projects this site to be a maintenance-only receptor in 2021. Also, both commenters claim that there will be an additional 2021 nonattainment receptor at the Greenwich, Connecticut monitoring site 090010017. One commenter noted that identifying the Madison monitoring site as nonattainment instead of maintenance-only and the Greenwich

[99] Because EPA directly modeled 2023 and 2028, EPA relied solely on that modeling, and associated inventories, for its analysis of 2023 and later years.

[100] Ozone design values and fourth high maximum daily 8-hour ozone concentrations for 2020 are preliminary and have not yet been cerified by EPA.

monitoring site as a receptor will not alter the outcome of EPA's determination of which upwind states are linked to downwind receptors at step 2 of the 4-step transport framework.

In addition to the 2021 receptors in Connecticut, one commenter said that there will be two additional monitoring sites in the eastern U.S. that each have a chance of being a nonattainment or maintenance receptor in 2021. These monitoring sites are Houston-Deer Parksite 492011039 and Dallas-Grapevine site 48439007). The other commenter said that their analysis shows that there will be up to four additional nonattainment receptors in 2021 in the eastern U.S. outside of Connecticut. These monitoring sites include the Chicago-Northbrook, Illinois monitoring site 170314201, the Michigan City, Indiana monitoring site 180910005, the El Paso, Texas monitoring site 481410037, and the Dallas-Eagle Mountain Rock monitoring site 484390075.

Response: EPA agrees with these commenters that the four monitoring sites identified by EPA as receptors in Table V.C–1 will be receptors in 2021. EPA also agrees that there would be no change in the upwind states covered by this rule if the Madison, Connecticut maintenance-only receptor is a nonattainment receptor rather than maintenance-only receptor. As described above, a maintenance-only receptor is a monitoring site that is at risk of being in nonattainment under meteorological conditions that are more conducive than average for ozone formation. Also, upwind states that are linked to maintenance-only receptors are evaluated by EPA using the same approach as those upwind states linked to nonattainment receptors in EPA's analysis of significant contribution in step 3 of the 4-step transport framework. Regarding the Greenwich, Connecticut monitoring site, EPA's contribution data, as provided in the docket for this rule, shows that there would be no additional upwind states covered by this rule if this monitoring site was included as a receptor in 2021. That is, all the upwind states that are linked to this monitoring site, using a 1 percent of the NAAQS threshold, are also linked to one or more of the other 2021 nonattainment and/or maintenance receptors in Connecticut that are identified in Table V.C–1.

EPA disagrees with the commenters that the six additional monitoring sites (*i.e.,* Chicago/Northbrook, Dallas/Eagle Mountain Rock, Dallas/Grapevine, El Paso, Houston/Deer Park, and Michigan City) will be nonattainment or maintenance receptors in 2021. First, as explained in the Air Quality TSD, these sites are not identified in the methodology EPA uses to identify nonattainment and maintenance receptors. These conclusions are bolstered by EPA's review of measured design values for the period 2012 through 2019 at each of these six monitoring sites (see Table V.C–2). These data show that each of these sites, except for the site in Michigan City, is not measuring nonattainment based on their 2019 design value, which are the most recent official design values based on state-certified data. Moreover, the monitoring site in El Paso has not measured a violation during this entire eight-year time period; the Houston/Deer Park site has not measured a violation in the most recent 6 years; the Dallas/Eagle Mountain Lake site has not measured a violation in the most recent 4 years; the Chicago/Northbrook site has measured only 1 violation in the most recent 6 years; and the Dallas/Grapevine site has measured only one violation in the most recent 4 years. At the Michigan City site, there are no official measured design values in 2016, 2017, and 2018 because there was no valid fourth high MDA8 ozone concentration in 2016. As a result, the data at this site did not meet the criteria in EPA's modeling guidance for calculating valid future year design values. As such, EPA has not calculated projected design values nor any contributions for this site.

TABLE V.C–2—OZONE DESIGN VALUES AT MONITORING SITES IDENTIFIED AS RECEPTORS BY COMMENTERS

Site ID	State	County	Site name	2012	2013	2014	2015	2016	2017	2018	2019
170314201	IL	Cook	Chicago/Northbrook	78	77	74	68	71	72	77	74
180910005	IN	LaPorte	Michigan City	83	83	79	68	.....	.....	.....	76
481410037	TX	El Paso	El Paso	72	72	72	71	70	71	73	75
482011039	TX	Harris	Houston/Deer Park	84	79	72	69	67	68	71	75
484390075	TX	Tarrant	Dallas/Eagle Mountain Lake	82	81	79	76	72	71	70	73
484393009	TX	Tarrant	Dallas/Grapevine	86	86	80	78	75	75	76	75

Comment: In the proposed rule EPA requested comment on applying the ''3 x 3'' approach and the ''no water cell'' approach, described above, to identify modeled-grid cells for use in projecting ozone design values to a future year. One commenter said that both the ''3 x 3'' and ''no water cell'' approaches are acceptable, a second commenter supported the use of the ''no water cell'' approach, while a third commenter suggested that EPA modify the ''no water cell'' approach to exclude from the calculation of projected design values any data from the grid cell containing the monitoring site, if the monitor grid cell is also dominated by water.

Response: EPA has considered these comments and will continue to rely upon the ''no water cell'' approach used for the proposed rule to calculate projected design values at monitoring sites in coastal areas. The alternative suggested by one commenter to exclude model data from the grid cell containing the monitoring site, if that grid cells is classified as a ''water'' grid cell, ignores the modeling data for the location of the monitoring state which is contrary to EPA's air quality modeling guidance. This guidance recommends that the calculation of ozone relative response factors, which are used in projecting future year design values, include the modeled data in grid cells immediately surrounding the monitoring site along with the grid cell in which the monitor is located. For coastal monitoring sites, the grid cell in which the monitor is located is more likely to be representative of the monitor locations, than adjacent over-water grid cells. In this regard, the approach suggested by the commenter is too restrictive in that modeling data in the grid cell containing the monitoring site would never be used in projecting design values for that monitor.

D. Pollutant Transport From Upwind States

1. Air Quality Modeling To Quantify Upwind State Contributions

This section documents the procedures EPA used to quantify the impact of emissions from specific upwind states on 2021 8-hour design values for the identified downwind nonattainment and maintenance

receptors. EPA used CAMx photochemical source apportionment modeling to quantify the impact of emissions in specific upwind states on downwind nonattainment and maintenance receptors for 8-hour ozone. CAMx employs enhanced source apportionment techniques that track the formation and transport of ozone from specific emissions sources and calculates the contribution of sources and precursors to ozone for individual receptor locations. The strength of the photochemical model source apportionment technique is that all modeled ozone at a given receptor location in the modeling domain is tracked back to specific sources of emissions and boundary conditions to fully characterize culpable sources.

EPA performed nationwide, state-level ozone source apportionment modeling using the CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis (OSAT/APCA) technique [101] to quantify the contribution of 2023 base case NO_X and VOC emissions from all sources in each state to projected 2023 ozone design values at air quality monitoring sites. The CAMx OSAT/APCA model run was performed for the period May 1 through September 30 using the projected 2023 base case emissions and 2016 meteorology for this time period. As described below, in the source apportionment modeling the Agency tracked (*i.e.,* tagged) the amount of ozone formed from anthropogenic emissions in each state individually as well as the contributions from other sources (*e.g.,* natural emissions).

To determine upwind contributions in 2021 the Agency applied the contributions from the 2023 modeling in a relative manner to the 2021 ozone design values. The analytic steps in the process are as follows:

(1) Calculate the 8-hour average contribution from each source tag to each monitoring site for the time period of the 8-hour daily maximum modeled concentrations in 2023;

(2) Average the contributions and concentrations for each of the top 10 modeled ozone concentration days in 2023 [102] and then divide the average contribution by the corresponding concentration to obtain a Relative Contribution Factor (RCF) for each monitoring site; and

(3) Multiply the 2021 design values by the 2023 RCF at each site to produce the average contribution metric values in 2021.[103] The resulting 2021 contributions from each tag to each monitoring site in the U.S. along with additional details on the source apportionment modeling and the procedures for calculating contributions can be found in the AQM TSD.

In the source apportionment model run, EPA tracked the ozone formed from each of the following tags:

- States—anthropogenic NO_X and VOC emissions from each state tracked individually (emissions from all anthropogenic sectors in a given state were combined);
- Biogenics—biogenic NO_X and VOC emissions domain-wide (*i.e.,* not by state);
- Boundary Concentrations—concentrations transported into the modeling domain;
- Tribes—the emissions from those tribal lands for which the Agency has point source inventory data in the 2016v1 emissions modeling platform (EPA did not model the contributions from individual tribes);
- Canada and Mexico—anthropogenic emissions from sources in the portions of Canada and Mexico included in the modeling domain (EPA did not model the contributions from Canada and Mexico separately);
- Fires—combined emissions from wild and prescribed fires domain-wide (*i.e.,* not by state); and
- Offshore—combined emissions from offshore marine vessels and offshore drilling platforms.

The contribution modeling provided contributions to ozone from anthropogenic NO_X and VOC emissions in each state, individually. The contributions to ozone from chemical reactions between biogenic NO_X and VOC emissions were modeled and assigned to the ''biogenic'' category. The contributions from wildfire and prescribed fire NO_X and VOC emissions were modeled and assigned to the ''fires'' category. That is, the contributions from the ''biogenic'' and ''fires'' categories are not assigned to individual states nor are they included in the state contributions.

The average contribution metric is intended to provide a reasonable representation of the contribution from individual states to the projected 2021 design value, based on modeled transport patterns and other meteorological conditions generally associated with modeled high ozone concentrations at the receptor. An average contribution metric constructed in this manner is beneficial since the magnitude of the contributions is directly related to the magnitude of the design value at each site.

The largest contribution from each state that is the subject of this rule to 8-hour ozone nonattainment and maintenance receptors in downwind states in 2021 is provided in Table V.D–1.

TABLE V.D–1—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS IN 2021

Upwind state	Largest downwind contribution to nonattainment receptors for ozone (ppb)	Largest downwind contribution to maintenance-only receptors for ozone (ppb)
Alabama	0.11	0.27

[101] As part of this technique, ozone formed from reactions between biogenic VOC and anthropogenic NO_X or biogenic NO_X and anthropogenic VOC are assigned to the anthropogenic emissions. This approach is designed to fully capture as part of the anthropogenic contribution the total amount of ozone formed from photochemical reactions that involve emissions from all anthropogenic sources. In this manner, ozone is assigned to the controllable (*i.e.,* anthropogenic) precursors that react with non-controllable (*i.e.,* biogenic) precursors.

[102] The number of days used in calculating the average contribution metric has historically been determined in a manner that is generally consistent with EPA's recommendations for projecting future year ozone design values. Our ozone attainment demonstration modeling guidance at the time of the CSAPR recommended using all model-predicted days above the NAAQS to calculate future year design values (*https://www3.epa.gov/ttn/scram/guidance/guide/final-03-pm-rh-guidance.pdf*). In 2014 EPA issued draft revised guidance that changed the recommended number of days to the top-10 model predicted days (*https://www3.epa.gov/ttn/scram/guidance/guide/Draft-O3-PM-RH-Modeling_Guidance-2014.pdf*). For the CSAPR Update EPA transitioned to calculating design values based on this draft revised approach. The revised modeling guidance was finalized in 2019 and, in this regard, EPA is calculating both the ozone design values and the contributions based on a top-10 day approach (*https://www3.epa.gov/ttn/scram/guidance/guide/O3-PM-RH-Modeling_Guidance-2018.pdf*).

[103] The method for calculating the average contribution metric values in 2021 was also applied to 2023 and 2028 based on the projected design values and contribution modeling for each of those years, respectively.

TABLE V.D–1—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS IN 2021—Continued

Upwind state	Largest downwind contribution to nonattainment receptors for ozone (ppb)	Largest downwind contribution to maintenance-only receptors for ozone (ppb)
Arkansas	0.18	0.15
Illinois	0.81	0.80
Indiana	1.26	1.08
Iowa	0.17	0.22
Kansas	0.13	0.11
Kentucky	0.87	0.79
Louisiana	0.27	4.68
Maryland	1.21	1.56
Michigan	1.71	1.62
Mississippi	0.10	0.37
Missouri	0.36	0.33
New Jersey	8.62	5.71
New York	14.44	12.54
Ohio	2.55	2.35
Oklahoma	0.20	0.14
Pennsylvania	6.86	5.64
Texas	0.59	0.36
Virginia	1.30	1.69
West Virginia	1.49	1.55
Wisconsin	0.23	0.23

Comment: One commenter said that the future year average contribution metric should be calculated using the modeled contributions on the same days that were used to calculate the RRFs for projecting future ozone design values.

Response: EPA believes that its approach, as described above, for calculating the future year average contribution metric provides a more technically reliable estimate of contributions than the method suggested by the commenter. In calculating the average contribution metric, EPA uses modeled contributions on the 10 days in the future year with the highest model-predicted concentrations.[104] In part because the formation of ozone from precursor emissions can be highly nonlinear and dependent on meteorological conditions, the response of ozone to emission reductions can vary from day to day. In this regard, the days with the highest model-predicted ozone concentrations in the 2016 base year that are used for projecting ozone design values may not be among the highest ozone days in the future analytic year. In this situation, the calculation of the contribution metric could exclude days with higher concentrations in the future year in favor of lower future-concentration days that happened to correspond to the highest days in 2016. The problems with basing the calculation of future year average contributions on the days that were used to project design values are illustrated in Table V.D–2. Table V.D–2 includes the data for all the days that were either used to project design values and/or to calculate the average contribution values from each upwind state to a particular receptor. The data in the ''2016 Modeled'' column are the 2016 base year MDA8 ozone concentrations and the data in the ''2023 Modeled'' column are the MDA8 ozone concentrations in 2023. The data in the table are ranked based on the magnitude of the 2016 MDA8 concentrations.[105] Comparing the 2023 MDA8 ozone concentrations to the corresponding 2016 values shows that the days with the highest MDA8 ozone concentrations in 2016 are not the same days as the highest MDA8 ozone concentrations in 2023. Of importance, the top 10 days based on 2016 model predictions includes five days with 2023 MDA8 ozone concentrations below 60 ppb. In calculating the average contribution metric EPA excludes from the calculation all days with future year modeled MDA8 concentrations below 60 ppb. Thus, using EPA's approach the average contribution metric in this example would be calculated based on daily contribution data for the top 6 MDA8 concentration days in 2023, because the remaining top 10 future year days are below 60 ppb (*i.e.,* 05/06, 05/13, 06/08, 09/12, and 09/28). Moreover, even though the concentration on the sixth-highest day in 2023 is 60 ppb, the contribution data on this day would be excluded from the calculations because this day is not among the top 10 days used to project design values.

TABLE V.D–2—MDA8 OZONE CONCENTRATIONS IN 2016 USED TO PROJECT DESIGN VALUES AND THE 2023 MODELED MDA8 CONCENTRATIONS ON THE SAME DAYS (ppb)

Date	2016 Rank	2016 Modeled	2023 Rank	2023 Modeled
07/01	1	79.4	3	69.1
06/27	2	79.4	1	74.5
05/12	3	76.4	2	69.7

[104] If there are fewer than 5 days with model-predicted future year ozone concentrations greater than or equal to 60 ppb, then an average contribution metric is not calculated because. Using the 60 ppb criteria aligns with the criteria for projecting future year design values, as recommended in EPA's air quality modeling guidance.

[105] Top 10 days that have modeled MDA8 ozone predictions less than 60 ppb are not included in the RRF calculation.

TABLE V.D–2—MDA8 OZONE CONCENTRATIONS IN 2016 USED TO PROJECT DESIGN VALUES AND THE 2023 MODELED MDA8 CONCENTRATIONS ON THE SAME DAYS (ppb)—Continued

Date	2016 Rank	2016 Modeled	2023 Rank	2023 Modeled
06/08	4	71.9	7	59.5
09/12	5	69.4	13	51.8
09/28	6	68.5	10	56.3
08/09	7	68.5	5	61.0
05/13	8	67.8	9	57.1
09/19	9	67.5	4	61.3
05/06	10	67.1	8	58.1
08/08	11	65.8	12	54.4
07/21	12	65.2	11	55.9
06/30	13	64.8	14	50.0
05/10	14	63.4	6	60.0

It is obviously impossible for EPA, or anyone, to predict which exact days in a future year will have high ozone levels, nor does it make sense to analyze contribution on modeled days of low ozone concentration. EPA's methodology is reasonable in projecting *where* ozone problems are likely to recur in a future year and analyzing *who* is contributing to those problems under the conditions for high ozone formation in those locations.

Comment: One commenter said that EPA should base the calculation of the future year contribution metric on days with measured exceedances of the NAAQS. Specifically, the comment asked EPA to examine the 2016 measured concentrations at receptors in Connecticut to ensure that the contribution from Illinois to these receptors was calculated on days when the monitor measured exceedances.

Response: EPA continues to believe that the future year contribution metric should be based on the highest ozone concentration days in the future year. However, as a sensitivity analysis EPA recalculated the average contribution from Illinois to the three receptors in Connecticut using the daily contributions on days with measured exceedances of the NAAQS, after applying the 60 ppb screening criteria to eliminate from the calculations those days with future year model-predicted MDA8 ozone concentrations below 60 ppb. The results of this sensitivity analysis, as provided in Table V.D–3, show that Illinois would contribute above the 1 percent of the NAAQS screening threshold to each of the three Connecticut receptors using the approach suggested by the commenter.

TABLE V.D–3—CONTRIBUTIONS FROM ILLINOIS (ppb) TO RECEPTORS IN CONNECTICUT

Receptor	Contribution based on EPA's method	Contribution based on measured exceedance days
Stratford	0.69	0.98
Westport ...	0.81	0.76
Madison	0.80	1.03

2. Application of Screening Threshold

EPA evaluated the magnitude of the contributions from each upwind state to downwind nonattainment and maintenance receptors. In step 2 of the good neighbor framework, EPA uses an air quality screening threshold to identify upwind states that contribute to downwind ozone concentrations in amounts sufficient to ''link'' them to these to downwind nonattainment and maintenance receptors. The contributions from each of the CSAPR Update states to each downwind nonattainment and/or maintenance receptor that were used for the step 2 evaluation can be found in the AQM TSD.

As discussed above in section IV, EPA is not reopening the air quality screening threshold of 1 percent of the NAAQS used in the CSAPR Update. Therefore, as in the CSAPR Update, EPA uses an 8-hour ozone value for this air quality threshold of 0.75 ppb as the quantification of 1 percent of the 2008 ozone NAAQS.

Comment: Several commenters said that EPA's 1 percent of the NAAQS threshold is too low and that, instead, a threshold of 1 ppb or 2 ppb should be used as the contribution screening threshold in step 2.

Response: As noted above, the Agency is not reopening the use of the 1 percent threshold in this action to address the remand of the CSAPR Update. This action is taken in response to the *Wisconsin* remand and to complete the good neighbor obligations that were partially addressed in the CSAPR Update. It is entirely appropriate to continue to apply the same screening threshold to identifying receptors to fully address the outstanding obligations as EPA took in initially addressing them. Indeed, to do otherwise would be anomalous and pose a risk of inconsistent requirements for different states. While the Agency is not reopening the application of the 1 percent threshold in this action on remand, explanation for how this value was originally derived is available in the CSAPR rulemaking in 2011. *See* 76 FR 48208, 48237–38. Further, in the CSAPR Update, EPA re-analyzed the threshold for purposes of the 2008 ozone NAAQS and determined it was appropriate to continue to apply this threshold. EPA compared the 1 percent threshold to a 0.5 percent of NAAQS threshold and a 5 percent of NAAQS threshold. EPA found that the lower threshold did not capture appreciably more upwind state contribution compared to the 1 percent threshold, while the 5 percent threshold allowed too much upwind state contribution to drop out from further analysis.[106] EPA therefore determined the 1 percent threshold was appropriate for purposes of good neighbor obligations under the 2008 ozone NAAQS. This determination was not challenged in the *Wisconsin* case. Thus, EPA is applying the 1 percent threshold at step 2, consistent with its initial analysis of obligations in the CSAPR Update and without reopening its prior determination on this issue in that rule.

a. States That Contribute Below the Screening Threshold

Of the 21 states that are the subject of this final rule, EPA has determined that the contributions from each of the

[106] *See* Final CSAPR Update Air Quality Modeling TSD, at 27–30 (EPA–HQ–OAR–2015–0596–0144).

following states to nonattainment and/or maintenance-only receptors in the 2021 analytic year are below the threshold: Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin. Because these states are considered not to contribute to projected downwind air quality problems, EPA is determining that the CSAPR Update FIPs for these states (or, in the case of Alabama and Missouri, the SIP revisions later approved to replace the states' CSAPR Update FIPs) are a complete remedy to address their significant contribution under the good neighbor provision for the 2008 ozone NAAQS. These states remain subject to the ozone season NO_X emission budgets established in the CSAPR Update, and EPA is not reopening the determinations in the CSAPR Update regarding these states.[107]

b. States That Contribute at or Above the Screening Threshold

In this final rule, states with remanded emission budgets under the CSAPR Update that contribute to a specific receptor in an amount at or above the screening threshold in 2021 are considered linked to that receptor. The ozone contributions and emissions (and available emission reductions) for these states are analyzed further at step 3, as described in section VI, to determine whether and to what extent emission reductions might be required from each state.

Based on the maximum downwind contributions in Table V.D–1, the step 2 analysis identifies that the following 11 states contribute at or above the 0.75 ppb threshold to downwind nonattainment receptors: Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. Based on the maximum downwind contributions in Table V.D–1, the following 12 states contribute at or above the 0.75 ppb threshold to downwind maintenance-only receptors: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. The levels of contribution between each of these linked upwind state and downwind nonattainment receptors and maintenance-only receptors are provided in Table V.D–2 and Table V.D–3, respectively.

[107] EPA notes that the updated modeling establishing that these states no longer contribute as of 2021 assumes in its baseline the continued implementation of the CSAPR Update budgets in these states.

TABLE V.D–2—CONTRIBUTION (ppb) FROM EACH LINKED UPWIND STATE TO DOWNWIND NONATTAINMENT RECEPTORS IN 2021

Upwind state	Nonattainment receptors	
	Stratford, CT	Westport, CT
Illinois	0.69	0.81
Indiana	0.99	1.26
Kentucky	0.78	0.87
Louisiana	0.27	0.27
Maryland	1.21	1.20
Michigan	1.16	1.71
New Jersey	7.70	8.62
New York	14.42	14.44
Ohio	2.34	2.55
Pennsylvania	6.72	6.86
Virginia	1.29	1.30
West Virginia	1.45	1.49

TABLE V.D–3—CONTRIBUTION (ppb) FROM EACH LINKED UPWIND STATE TO DOWNWIND MAINTENANCE-ONLY RECEPTORS IN 2021

Upwind state	Maintenance-only receptors	
	Madison, CT	Houston, TX
Illinois	0.80	0.02
Indiana	1.08	0.02
Kentucky	0.79	0.02
Louisiana	0.15	4.68
Maryland	1.56	0.00
Michigan	1.62	0.00
New Jersey	5.71	0.00
New York	12.54	0.00
Ohio	2.35	0.00
Pennsylvania	5.64	0.00
Virginia	1.69	0.00
West Virginia	1.55	0.00

In conclusion, as described above, states with contributions that equal or exceed 1 percent of the NAAQS to either nonattainment or maintenance receptors are identified as ''linked'' at step 2 of the good neighbor framework and warrant further analysis for significant contribution to nonattainment or interference with maintenance under step 3. EPA is determining that the following 12 States are linked at step 2: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

VI. Quantifying Upwind-State NO_X Reduction Potential To Reduce Interstate Ozone Transport for the 2008 Ozone NAAQS

A. The Multi-Factor Test

This section describes EPA's methodology at step 3 of the 4-step framework for identifying upwind emissions that constitute ''significant'' contribution for the states subject to this final rule. This analysis focuses on the 12 states linked at steps 1 and 2 of the framework, as identified in the sections above. Following the existing framework as applied in the CSAPR Update, EPA's assessment of linked upwind state emissions reflects analysis of uniform NO_X emission control stringency. The analysis has been extended to include assessment of non-EGU sources in addition to EGU sources in the linked upwind states.

Each level of uniform NO_X control stringency is characterized by a set of pollution control measures. EPA applies a multi-factor test—the same multi-factor test that was used in the CSAPR and the CSAPR Update [108]—to evaluate increasing levels of uniform NO_X control stringency. The multi-factor test, which is central to EPA's step 3 quantification of significant contribution, considers cost, available emission reductions, and downwind air quality impacts to determine the appropriate level of uniform NO_X control stringency that addresses the impacts of interstate transport on downwind nonattainment or maintenance receptors. The uniform NO_X emission control stringency, represented by marginal cost (or a weighted average cost in the case of EPA's non-EGU analysis), also serves to apportion the reduction responsibility among collectively contributing upwind states. This approach to quantifying upwind state emission-reduction obligations using uniform cost was reviewed by the Supreme Court in *EME Homer City Generation,* which held that using such an approach to apportion emission reduction responsibilities among upwind states that are collectively responsible for downwind air quality impacts ''is an efficient and equitable solution to the allocation problem the Good Neighbor Provision requires the Agency to address.'' 572 U.S. at 519.

There are four stages in developing the multi-factor test: (1) Identify levels of uniform NO_X control stringency; (2) evaluate potential NO_X emission reductions associated with each identified level of uniform control stringency; (3) assess air quality improvements at downwind receptors for each level of uniform control stringency; and (4) select a level of control stringency considering the identified cost, available NO_X emission reductions, and downwind air quality impacts, while also ensuring that emission reductions do not unnecessarily over-control relative to

[108] *See* CSAPR, Final Rule, 76 FR 48208 (Aug. 8, 2011).

the contribution threshold or downwind air quality.

Comment: Some commenters suggested EPA also consider regulating volatile organic compounds (VOCs) as it represents another precursor to ozone formation. They assert EPA's failure to reduce significant contributions to downwind nonattainment/maintenance by reducing upwind VOC emissions disproportionately harms communities of color, low-income communities, and children, perpetuating environmental injustice.

Response: EPA agrees that VOCs are a precursor along with NO_X in forming ground-level ozone and that ozone formation chemistry can be ''NO_X-limited'', where ozone production is primarily determined by the amount of NO_X emissions or ''VOC-limited'', where ozone production is primarily determined by the amount of VOC emissions.[109] EPA also acknowledges that VOCs can contain toxic chemicals that affect public health. EPA's obligation in this action is to complete the elimination of significant contribution to nonattainment or interference with maintenance of NAAQS in other states for 12 states in the East to meet the requirements of section 110(a)(2)(D)(i)(I) of the Act. Provisions for local NAAQS attainment and exposure to toxic pollutant concentrations are addressed by other sections of the statute. EPA and others have long regarded NO_X to be the more significant ozone precursor in the context of interstate ozone transport.[110] In response to this comment, EPA examined the results of the contribution modeling performed for this rule to identify the portion of the ozone contribution attributable to anthropogenic NO_X emissions versus VOC emissions from each linked upwind state to each downwind receptor. Table VI.A provides the ozone contribution from each upwind state linked to the receptors in Connecticut along with the percent (in parenthesis) of the contribution that is formed under ''NO_X-limited'' photochemistry. The data show that NO_X is the determinative precursor for over 80 percent of the total contribution from each upwind state to each of these receptors. In addition to the Connecticut receptors, ozone primarily formed from NO_X emissions is 95 percent of the 4.58 ppb contribution from Louisiana to the receptor in Harris County, Texas. Therefore, EPA's review of the data leads to the finding that, as proposed, a focus on NO_X emission reductions is appropriate for the purpose of addressing interstate ozone transport.

TABLE VI.A.—CONTRIBUTION (ppb) FROM EACH LINKED UPWIND STATE TO RECEPTORS IN CONNECTICUT AND THE PERCENT OF THE CONTRIBUTION FROM NO_X

State	Receptor	IL	IN	KY	MD	MI	NJ	NY	OH	PA	VA	WV
CT ..	Stratford	Not Linked	0.96 (95%)	0.76 (96%)	1.18 (90%)	1.13 (95%)	7.48 (83%)	14.01 (81%)	2.27 (95%)	6.53 (93%)	1.25 (93%)	1.41 (97%)
CT ..	Westport	0.79 (94%)	1.23 (95%)	0.85 (96%)	1.18 (89%)	1.67 (94%)	8.44 (83%)	14.14 (81%)	2.50 (95%)	6.72 (92%)	1.27 (92%)	1.45 (96%)
CT ..	Madison	0.78 (95%)	1.04 (96%)	0.77 (96%)	1.51 (91%)	1.57 (95%)	5.53 (84%)	12.15 (86%)	2.27 (95%)	5.47 (92%)	1.63 (93%)	1.51 (96%)

For both EGUs and non-EGUs, section VI.B describes the available NO_X emission controls considered and their associated cost levels (in 2016$). Section VI.C discusses EPA's application of that information to assess emission reduction potential of the identified control stringencies. Finally, section VI.D describes EPA's assessment of associated air quality impacts and EPA's subsequent identification of appropriate control stringencies considering the relevant factors (cost, available emission reductions, and downwind air quality impacts). As discussed in greater detail in section VI.D, the multi-factor test informed EPA's determination of appropriate EGU NO_X ozone season emission budgets necessary to reduce emissions that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS for the 2021 ozone season and subsequent control periods.

This multi-factor approach is consistent with EPA's approach in the prior CSAPR and CSAPR Update actions. In addition, as was done in the CSAPR Update, EPA evaluated possible over-control by determining if an upwind state is linked solely to downwind air quality problems that could have been resolved at a lower representative cost threshold, or if upwind states could reduce their emissions below the 1 percent air quality contribution threshold at a lower representative cost threshold. This analysis is described in section VI.D.

In the proposed rule, EPA identified a control stringency that reflects the optimization of existing SCR controls and installation of state-of-the-art NO_X combustion controls at EGUs, with an estimated marginal cost of $1,600 per ton. As explained in greater detail in section VI.D, EPA is finalizing an EGU control stringency that also includes optimizing existing SNCR controls. Application of the multi-factor test to non-EGU sources has led EPA to conclude, as the Agency proposed, that emission reductions from non-EGU sources are not necessary to address significant contribution or interference with maintenance under the 2008 ozone NAAQS.

B. Identifying Levels of Control Stringency

1. EGU NO_X Mitigation Strategies

In identifying levels of uniform control stringency for EGUs, EPA reassessed the same NO_X emission controls that it had analyzed in the CSAPR Update, all of which are considered to be widely available in this sector: (1) Fully operating existing SCR, including both optimizing NO_X removal by existing operational SCRs and turning on and optimizing existing idled SCRs; (2) installing state-of-the-art NO_X combustion controls; (3) fully operating existing SNCRs, including both optimizing NO_X removal by existing operational SNCRs and turning on and optimizing existing idled SNCRs; (4) installing new SNCRs; and (5) installing new SCRs. For the reasons explained in the EGU NO_X Mitigation Strategies Final Rule TSD included in the docket for this final rule, EPA determined that for the regional, multi-state scale of this rulemaking, only EGU NO_X emission controls 1 and 3 are possible for the 2021 ozone season (fully operating existing SCRs and SNCRs). As discussed

[109] ''Ozone Air Pollution.'' *Introduction to Atmospheric Chemistry,* by Daniel J. Jacob, Princeton University Press, Princeton, New Jersey, 1999, pp. 231–244.

[110] 81 FR 74514.

in section VI.B.1.b, EPA finds that it is not possible to install state-of-the-art NO_X combustion controls by the 2021 ozone season on a regional scale. EPA determined state-of-the-art NO_X combustion controls at EGUs are available by the beginning of the 2022 ozone season.

a. Optimizing Existing SCRs

Optimizing (*i.e.,* turning on idled or improving operation of partially operating) existing SCRs can substantially reduce EGU NO_X emissions quickly using investments that have already been made in pollution control technologies. With the promulgation of the CSAPR Update, most operators improved their SCR performance and have continued to maintain that level of improved operation. However, this SCR performance is not universal and some drop has been observed as the CSAPR Update ozone-season allowance price has declined steadily since 2017. For example, recent power sector data from 2019 reveal that, in some cases, operating units have SCR controls that have been idled or are operating partially, and therefore suggest that there remains reduction potential through optimization.[111] EPA determined that optimizing all of these remaining SCRs in the 12 linked states is a readily available approach for EGUs to reduce NO_X emissions.

EPA estimates a representative cost of optimizing SCR controls to be approximately $1,600 per ton. EPA's analysis of this emission control is informed by comment on the CSAPR Update proposed rule and updated information on operation and industrial-input costs that have become available since the CSAPR Update.[112] While the costs of optimizing existing, operational SCRs include only variable costs, the cost of optimizing SCR units that are currently idled back into service considers both variable and fixed costs. Variable and fixed costs include labor, maintenance and repair, parasitic load, and ammonia or urea for use as a NO_X reduction reagent in SCR systems. EPA performed an in-depth cost assessment for all coal-fired units with SCRs. More information about this analysis is available in the EGU NO_X Mitigation Strategies Final Rule TSD, which is found in the docket for this rule. The TSD notes that, for the subset of SCRs that are already partially operating, the cost of optimizing is often much lower than the $1,600 per ton marginal cost and often under $800 per ton.

EPA is using the same methodology to identify SCR performance as it did in the CSAPR Update. To estimate EGU NO_X reduction potential from optimizing, EPA considers the difference between the non-optimized NO_X emission rates and an achievable operating and optimized SCR NO_X emission rate. To determine this rate in the CSAPR Update, EPA evaluated nationwide coal-fired EGU NO_X ozone season emissions data from 2009 through 2015 and calculated an average NO_X ozone season emission rate across the fleet of coal-fired EGUs with SCR for each of these seven years. EPA found it prudent to not consider the lowest or second-lowest ozone season NO_X emission rates, which may reflect new SCR systems that have all new components (*e.g.,* new layers of catalyst). Data from these new systems are not representative of ongoing achievable NO_X emission rates considering broken-in components and routine maintenance schedules. To identify the potential reductions from SCR optimization in this final action, EPA followed the same methodology and incorporated the latest reported coal-fired EGU NO_X ozone season emissions data. EPA updated the timeframe to include the most recent and best available operational data (*i.e.,* 2009 through 2019). Considering the emissions data over the full time period of available data results in a third-best rate of 0.08 pounds per million British thermal units (lb/mmBtu). EPA notes that over half of the SCR-controlled EGUs achieved a NO_X emission rate of 0.068 lbs/mmBtu or less over their third-best entire ozone season. Moreover, for the SCR-controlled coal units that EPA identified as having a 2019 emission rate greater than 0.08 lb/mmBtu, EPA verified that in prior years, the majority (approximately 95 percent) of these same units had demonstrated and achieved a NO_X emission rate of 0.08 lb/mmBtu or less on a seasonal and/or monthly basis. This further supports EPA's determination that 0.08 lb/mmBtu reflects a reasonable emission rate for representing SCR optimization in quantifying state emission budgets as discussed in section VII.B. This fleet-level emission rate assumption of 0.08 lb/mmBtu for non-optimized units reflects, on average, what those units would achieve when optimized. Some of these units may achieve rates that are lower than 0.08 lb/mmBtu, and some units may operate above that rate based on unit-specific configuration and dispatch patterns.

EPA evaluated the feasibility of optimizing idled SCRs for the 2021 ozone season. Based on industry past practice, EPA determined that idled controls can be restored to operation quickly (less than two months). This timeframe is informed by many electric utilities' previous long-standing practice of utilizing SCRs to reduce EGU NO_X emission during the ozone season while putting the systems into protective lay-up during the non-ozone season months. For example, this was the long-standing practice of many EGUs that used SCR systems for compliance with the NO_X Budget Trading Program. It was quite typical for SCRs to be turned off following the September 30 end of the ozone season control period. These controls would then be put into protective lay-up for several months of non-use before being returned to operation by May 1 of the following ozone season.[113] Therefore, EPA believes that optimization of existing SCRs is possible for the portion of the 2021 ozone season covered under this final rule.

The vast majority of SCR controlled units (nationwide and in the 12 linked states) are already partially operating these controls during the ozone season based on historical 2019 emissions rates. EPA believes that this widely demonstrated seasonal behavior of turning on idled SCRs also supports the Agency's determination that optimizing existing SCR systems currently being operated to some degree within the ozone season, which would necessitate fewer changes to SCR operation relative to restarting idled systems, is also feasible for the 2021 ozone season. Full operation of existing SCRs that are already operating to some extent involves increasing reagent (*i.e.,* ammonia or urea) flow rate, and maintaining and replacing catalyst to sustain higher NO_X removal rate operations. Increasing NO_X removal by SCR controls that are already operating can be implemented by procuring more reagent and catalyst. EGUs with SCR routinely procure reagent and catalyst as

[111] *See* ''Ozone Season Data 2018 vs. 2019'' and ''Coal-fired Characteristics and Controls'' at *https://www.epa.gov/airmarkets/power-plant-data-highlights#OzoneSeason.*

[112] The CSAPR Update found $1,400 per ton was a level of uniform control stringency that represented turning on idled SCR controls. EPA uses the same costing methodology, but updating for input cost increases (*e.g.,* urea reagent) to arrive at $1,600 per ton in this rule (while also updated from 2011 dollars to 2016 dollars).

[113] In the 22 state CSAPR Update region, 2005 EGU NO_X emissions data suggest that 125 EGUs operated SCR systems in the summer ozone season while idling these controls for the remaining 7 non-ozone season months of the year. Units with SCR were identified as those with 2005 ozone season average NO_X rates that were less than 0.12 lbs/mmBtu and 2005 average non-ozone season NO_X emission rates that exceeded 0.12 lbs/mmBtu and where the average non-ozone season NO_X rate was more than double the ozone season rate.

part of ongoing operation and maintenance of the SCR system. In many cases, where EPA has identified EGUs that are operating their SCR at non-optimized NO_X removal efficiencies, EGU data indicate that these units historically have achieved more efficient NO_X removal rates. Therefore, EPA determined that optimizing existing SCRs currently being operated could generally be done by reverting back to previous operation and maintenance plans. Regarding full operation activities, existing SCRs that are only operating at partial capacity still provide functioning, maintained systems that may only require increased chemical reagent feed rate up to their design potential and catalyst maintenance for mitigating NO_X emissions. Units must have adequate inventory of chemical reagent and catalyst deliveries to sustain operations. Considering that units have procurement programs in place for operating SCRs, this may only require updating the frequency of deliveries. This may be accomplished within a few weeks.

Comment: EPA received comments supporting the 0.08 lb/mmBtu emission rate as achievable and, according to some commenters, conservative. Some of these commenters went on to provide their own analysis demonstrating that the 0.08 lb/mmBtu was achievable not only on average for the non-optimized fleet, but also for these individual units and that the resulting state emission budgets were likewise achievable. Some commenters suggested that the rate should be lower and premised on EPA using a longer historical baseline (*e.g.,* extending baseline back to year 2006) and relying on the first- or second-best year instead of the third best year of SCR performance. In addition to supporting the 0.08 lb/mmBtu optimization rate as viable for 2021, these same commenters noted the 2021 attainment data and suggested implementation by 2021 was not only achievable, but necessary under Clean Air Act requirements and the *Wisconsin* directive.

Response: As explained above, EPA chose 2009 for the start of its baseline period of SCR performance examination because that is the first year of annual compliance under the CAIR NO_X program. The analysis focuses on the third best ozone season average rate because EPA believes that the first or second best rate, as discussed in the CSAPR Update final rule, could continue to capture disproportionately new SCR components and/or the onset of new regulatory programs and does not necessarily reflect achievable ongoing NO_X emission rates. Therefore, EPA is finalizing analysis using the third best rate starting from 2009—consistent with its approach in the CSAPR Update.

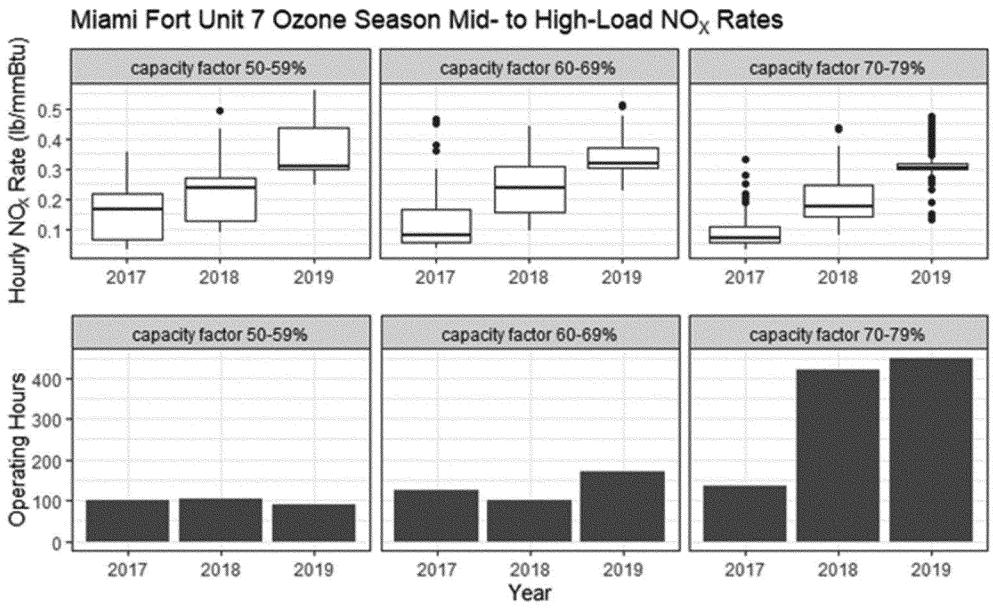
Comment: Other commenters suggested that EPA should apply a higher emission rate than 0.08 lb/mmBtu premised on considerations such as: A generally reduced average capacity factor for coal units in recent years, the age of the boiler, coal rank (bituminous or subbituminous), or other unit-specific considerations that make the 0.08 lb/mmBtu rate unattainable for a specific unit. They also suggested that EPA's determination of the rate should be premised on EPA using a shorter historical baseline (*e.g.,* shortening the baseline to year 2013).

Response: EPA did not find sufficient justification to apply a higher average emission rate than 0.08 lb/mmBtu or for shortening the baseline to exclude representative operational data starting in 2009. EPA found that some commenters were misunderstanding or misconstruing both EPA's assumption and implementation mechanism as a unit-level requirement for every SCR-controlled unit instead of a reflection of a fleet-wide average based on a third-best rate. The commenters' observation—that 0.08 lb/mmBtu may be difficult for some units to achieve or may not be a preferred compliance strategy for a given unit given its dispatch levels—does not contradict EPA's assumption, but rather supports its methodology and assumptions. As EPA pointed out in the proposed rule, ''this fleet-level emission rate assumption of 0.08 lb/mmBtu for non-optimized units reflects, on average, what those units would achieve when optimized. Some of these units may achieve rates that are lower than 0.08 lb/mmBtu, and some units may operate above that rate based on unit-specific configuration and dispatch patterns.'' [114] In other words, EPA is using this assumption as the average performance of a unit that optimizes its SCR, recognizing that heterogeneity within the fleet will likely lead some units to overperform and others to underperform this rate. Moreover, a review of unit-specific historical data indicates that this is a reasonable assumption: Not only has the group of units with SCR optimization potential demonstrated they can perform at or better than the 0.08 lb/mmBtu rate on average, but 95 percent of the individual units in this group have met this rate on a seasonal and/or monthly basis based on their reported historical data.[115] Additionally, EPA's examination of units with the largest emission reduction potential based on SCR optimization levels of 0.08 lb/mmBtu indicates the ability of units to improve emission rate performance. As an example, Miami Fort Unit 7 had considerably more hours operating at a 70 to 79 percent capacity factor in 2019 compared to previous years. However, Miami Fort Unit 7's ozone-season NO_X emission rate *substantially increased* in 2019 compared to previous years. This runs counter to the notion that an increase in emission rates is purely driven by reduced capacity factor, as suggested by commenters. This substantial deterioration in the median emission rate performance is observable even when comparing specific hours in 2019 to specific hours in prior years when the unit operated in the same 70 to 79 percent capacity factor range. In fact, in 2019 the unit experienced notable emission rate increases from prior years across multiple capacity factor ranges as low as 40 percent to as high as 80 percent. This type of data indicates instances where the increase in emission rate (and emissions) is not necessitated by load changes but is more likely due to the erosion of the existing incentive to optimize controls (*i.e.,* the ozone-season NO_x allowance price has fallen so low that unit operators find it more economic to surrender additional allowances instead of continuing to operate pollution controls at an optimized level). This type of decline in emission rate performance at some SCR-controlled units is what EPA disincentivizes with the full remedy nature of this action.

[114] 85 FR 68991.

[115] See ''Optimizing SCR Units With Best Historical NO_X Rates Final'' file included in the docket for this rulemaking.

Figure 1 to Section VI.B.- Example of Unit-level Emission Rate Changes at a Given Capacity Factor Range.



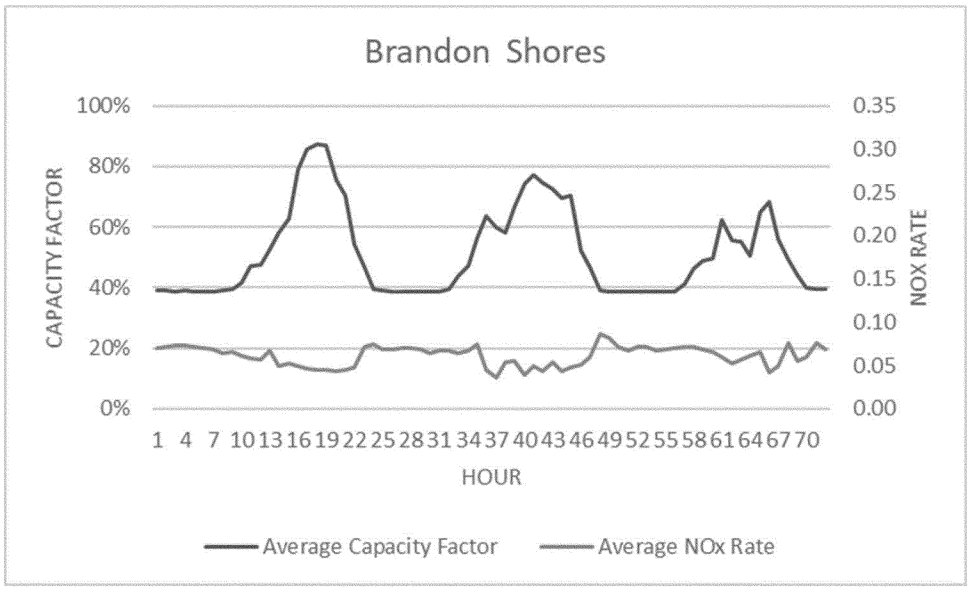
EPA observed this pattern in other units identified in this rulemaking as having significant SCR optimization emission reduction potential. In the accompanying Emissions Data TSD for the supplemental notice that EPA recently released in a proceeding to address a recommendation submitted to EPA by the Ozone Transport Commission under CAA section 184(c), EPA noted, ''In their years with the lowest average ozone season NO_X emission rates in this analysis, these EGUs had relatively low NO_X emission rates at mid- and high-operating levels; moreover, there was little variability in NO_X emission rates at these operating levels. However, during the 2019 ozone season, these EGUs had higher NO_X emission rates and greater variability in NO_X emission rates across operating levels than in the past, particularly at mid-operating levels.'' [116] That hourly data analysis, included in this docket, controls for operating level changes and still finds there to be instances across multiple SCR-controlled units in the 12-state region where hourly emission rates are increasing even when compared to the same load levels in previous years.

To the extent commenters have alleged that in recent years coal-fired EGUs have declined in capacity factor and that SCR performance declines at those lower operating levels, EPA notes that this does not necessarily result in a compliance feasibility challenge. First, as explained elsewhere in this section, EPA believes the 0.08 rate assumption is achievable on a fleetwide average basis. Second, the implementation mechanism of a mass-based emission trading program eliminates any compliance feasibility concern. Even if reduced operation of a unit were to affect the rate-based performance of a unit, it would also lower emissions-producing generation from that unit, which in turn reduces the number of allowances the unit operator must hold for compliance under this emission trading program. Commenters have failed to establish that compliance with the mass-based implementation mechanism of this rule is actually unachievable. Further, hourly data indicate that maintaining consistent SCR performance at lower capacity factors is possible. For example, the unit-level performance data in the graph below show the emission rate at a plant staying relatively low (consistent with our optimization assumption of 0.08 lb/mmBtu) and stable across a wide range of capacity factors.[117]

[116] ''Analysis of Ozone Season NO_X Emissions Data for Coal-Fired EGUs in Four Mid-Atlantic States''. EPA Clean Air Markets Division. December 2020. Available at *https://www.epa.gov/sites/production/files/2020–12/documents/184c_emission_data_tsd.pdf.*

[117] EPA, *Air Markets Program Data.* Available at *www.epa.gov/ampd.*

Figure 2 to Section VI.B.- Example of Consistently Low Unit-level Emission Rate During Periods of Varying Capacity Factor



Comment: EPA received comment suggesting that EPA subcategorize its SCR optimization rate assumption by coal rank (*i.e.,* bituminous or subbituminous) as the difference between the two would imply that the 0.08 lb/mmBtu rate is not appropriate.

Response: EPA reviewed historical data for SCR operation by coal rank and assessed it against its 0.08 lb/mmBtu fleet-wide average assumption and did not find any change necessary or appropriate. EPA found many instances of both SCR-controlled coal units combusting subbituminous coal and SCR-controlled coal units combusting bituminous coal (including instances in earlier years where these very same units that EPA is identifying as having optimization potential relative to their 2019 levels) operating at emission rate levels at or below the 0.08 lb/mmBtu rate. In other words, although these units may not be operating at this emission rate in 2019, it is not due to coal rank as they have—in the vast majority of cases—met that rate in some period prior to 2019. In this case, the use of the average rate and the third best year accommodates any heterogeneity in emission rate that may stem from a unit's coal choice and makes 0.08 lb/mmBtu a reasonable average performance rate regardless of coal rank. Moreover, EPA notes that the covered fleet with the identified SCR optimization potential identified in this rule is composed of sources who have purchased and consumed both subbituminous and bituminous coal. The presence of both types of coal burning units within the region coupled with this observation that some units have utilized both types of coal, further support the use of a single fleet-wide average for purposes of estimating reduction potential and implementing state emission budgets—consistent with the CSAPR Update. This use of an average value, instead of two separate values is also consistent with EPA's approach in the CSAPR Update. EPA further examines and addresses this comment in the EGU NO_X Mitigation Strategies Final Rule TSD.

Comment: EPA also received comment suggesting it should deviate from its approach in the CSAPR Update of using a nationwide set of data to establish a third best year, and instead use an average from just the 12 covered states.

Response: EPA reviewed the data and its methodology and evaluated it against its intention to identify a technology-specific representative emission rate for SCR optimization. In doing so, EPA did not identify any need to make the suggested change. EPA is interested in the performance potential of a technology, and a larger dataset provides a superior indication of that potential as opposed to a smaller, state-limited dataset. In both the CSAPR Update and in this rule, EPA appropriately relied on the largest dataset possible (*i.e.,* nationwide) to derive technology performance averages that it then applied respectively to the CSAPR Update 22-state region and this rule's 12-state region. Finally, as noted above, in affirming the reasonableness of this approach, EPA examined the historical reported data (pre-2019) for the units in the 12 states with SCR optimization potential and found the nationwide derived average appropriate and consistent with demonstrated capability and performance of units within those states. That is, the vast majority of units for which this resulting emission rate assumption was being applied had demonstrated the ability to achieve this rate in some prior time period. This information is discussed further in the EGU NOx Mitigation Strategies Final Rule TSD in the docket.

In the proposed rule, EPA relied on the same SCR optimization timing assumptions it utilized in the CSAPR Update. EPA received comments on the feasibility of implementing SCR optimization mitigation measures by the start of the 2021 ozone season.

Comment: While many commenters supported the feasibility of 2021 ozone-season implementation by noting the ''immediate availability'' of SCR optimization, those that did not focused on two concerns: (1) That the engineering, procurement, and other steps required for SCR optimization were not feasible given the anticipated 1.5 months between rule finalization and the start of the 2021 ozone season and (2) that the short implementation time frame may not allow enough time

for allowance trading to occur, and thus jeopardize allowance market liquidity and the overall that the implementation mechanism of a trading program.

Response: EPA disagrees that these concerns justify a change in approach, as explained below, and is finalizing the same SCR optimization timing assumptions it proposed.

As an initial matter, sources will have more than two months between the date of signature on this final action and the rule's effective date when the enhanced control stringency being adopted in this rule will take effect.[118] Further, EPA has determined that this implementation schedule is achievable and necessary in order to address good neighbor obligations by the July 20, 2021 Serious area attainment date for certain downwind receptors, in accordance with the *Wisconsin* decision of the D.C. Circuit.[119] While EPA observes that implementation of this control stringency is viable during the 2021 ozone season at the unit level as described below, it also notes that the flexible implementation mechanism of a trading program, starting bank, and safety valve (as discussed in VII.C.4) obviate any unit-specific compliance challenges raised by commenters.

As indicated in the discussion and graphics above, data in the EGU NO_X Mitigation Strategies Final Rule TSD, and in the CSAPR Update, there is ample evidence of units restoring their optimal performance within a two-month timeframe. Not only do units reactivate SCR performance level at the start of an ozone-season when tighter emission limits begin, but unit-level data also shows instances where sources have demonstrated the ability to quickly alter their emission rate within an ozone-season and even within the same day in some cases. Moreover, this emission control is familiar to sources and was analyzed and included in the CSAPR Update emission budgets finalized in 2016. With this experience, and notice through the October 2020 proposed rule, as well as over two months from final rule to effective date, the viability of this emission control for the 2021 ozone season is entirely consistent with the 2-week to 2-month timeframe that EPA identified as reasonable in both the CSAPR Update and the proposed rule. Similar to prior rules, commenters provide some unit-level examples where it has taken longer. Also similar to those prior rules, EPA does not find those unit-level examples compelling in the context of its fleet average assumptions and in the implementation context of a trading program which provides compliance alternatives in the event a specific unit prefers more time to implement the control stringency. As noted in *Wisconsin,* ''. . . all those anecdotes show is that installation can drag on when companies are unconstrained by the ticking clock of the law.'' 938 F.3d at 330. Commenters also provide logistical details for certain engineering steps (*e.g.,* procuring catalyst replacement) that will not be necessary in many instances to improve performance at existing SCRs. The majority of emission reductions from units with SCRs would be available within hours (from turning on and fully operating those existing control devices) even in the absence of catalyst that is not as optimally configured or with reagent sprayers that have not been recently tuned as commenters suggest they must be. And as noted previously, a prudent EGU operator has had since at least the publication date of the proposed rule in October 2020 to take steps to prepare for compliance, such as planning for the necessary products to run their controls.

EPA further disagrees with commenters' assertions that the 2021 emission budgets are not feasible. Claiming that ultimate compliance with the emissions trading program is infeasible ignores the flexibilities of EPA's trading program implementation mechanism, including the starting allowance bank and the ''safety valve'' mechanism for accessing even more allowances. EPA uses a fleet-wide average assumption that non-optimized units with SCR will optimize to 0.08 lb/mmBtu on average by 2021. EPA uses this average assumption in its derivation of state-emission budgets, but then implements the reductions through a trading program that provides sources the flexibility to operate at different emission rates, as they need only hold allowances adequate to cover their emissions for the relevant control period. Not every unit need implement this emission control or meet this rate in order to comply with the state budget under the trading program. For some units, the timing and rate performance will likely be easier to meet than estimated by EPA, creating space for other sources to achieve different rates on different schedules while collectively complying with the state emission budget. Additionally, while given the large amount of historical data demonstrating that units can operate their controls (often within hours of startup), unit operation (*i.e.,* seasonal capacity factor) is another variable that operators can utilize to reduce seasonal emissions. In short, because compliance is based on seasonal emission totals, variation in emission rates is not on its own a barrier to meeting a seasonal total state emission target. In short, commenters concerned about 2021 implementation viability largely neglected these critical aspects of the trading program and did not provide any comprehensive state or system modeling showing the 2021 implementation of the state budgets was not achievable when factoring in the program's trading program. Instead of performing this critical evaluation step, commenters most often limited their arguments to a hypothetical unit-specific rate requirement evaluation, ignoring the broader mechanisms of EPA's quantification and implementation of good neighbor obligations.

EPA notes that historical emission data and program experience support its assumption regarding timing of these emission controls. Similar arguments regarding next-season implementation challenges were made against the CSAPR Update but were not borne out in the data as both unit-level and state-level emissions adjusted consistent with EPA's assumptions for that first season of implementation (the emission rate at SCR controlled units dropped by nearly half in the 2017 ozone season, the first ozone-season of the CSAPR Update implementation) when EPA examined this challenge in the context of EPA's Response to CAA section 126(b) petitions from Maryland and Delaware.[120] Moreover, the future modeling data, as well as some commenters' own analysis, supported the viability of EPA's 2021 implementation. Finally, some utilities with a significant footprint in this region even have their own near-term and medium-term emission reduction goals, which, if realized, reflect even

[118] As discussed in section VII.C.4.a, EPA is ensuring that the enhanced control stringency represented by the new budgets will not take effect until the rule's effective date by issuing supplemental allowances for the portion of the 2021 ozone season occurring before the rule's effective date.

[119] EPA further disagrees with these commenters to the extent they are suggesting that they could not have prudently taken steps to prepare for compliance with this control stringency by the 2021 ozone season at least from the date of the proposed rule in October of 2020. *See Americans for Clean Energy* v. *EPA,* 864 F.3d 691, 721–22 (D.C. Cir. 2017) (rejecting industry claims of insufficient time for compliance when proposed rule provided ''many months'' notice of the likely obligations established in the final rule). EPA notes that all reductions finalized in this rule were discussed in those proposed rule materials, and SCR optimization-driven reductions—accounting for the vast majority of 2021 reductions—were proposed in that October notice.

[120] 83 FR 50465.

more fleet alignment with emission reductions.[121] [122] For all of these reasons, EPA determined it was not necessary to change its emission control implementation timing assumptions from those utilized in the CSAPR Update.

With regard to market liquidity concerns, EPA notes that those same concerns have been voiced in the lead-up to past trading programs but ultimately did not materialize. For example, a functioning allowance market formed and resulted in 100 percent compliance with the allowance holding requirements during the first year of implementation. See more discussion on this issue in section VII.C.3. EPA notes that the date by which sources must hold allowances to cover their emissions for the first control period under this final rule is June 1, 2022—more than 14 months after the date of signature of the rule. Moreover, shortly after the final rule's effective date and well before the end of the 2021 control period, the allowances allocated to most sources from both the state emission budgets and from the initial Group 3 bank will be recorded in sources' accounts and available for trading. Finally, as an additional measure promoting market liquidity, EPA will allow the use of Group 2 allowances at an 18:1 trade-in ratio to provide additional assurance to sources that allowances will be available, but ensuring that the cost of this compliance option is such that entities will take it only in the very unlikely event that access to such additional allowances proves to be necessary. The safety valve is described further in section VII.C.4.c., The presence of the safety valve, combined with the recordation of allowances from the state budgets and the starting bank shortly after the rule's effective date, should obviate any market liquidity concerns, as the number of allowances available for trading in the market for the first control period well in advance of the compliance deadline will accommodate a variety of compliance pathways and unit operational decisions.

b. Installing State-of-the-Art NO_X Combustion Controls

EPA estimates that the representative cost of installing state-of-the-art combustion controls is comparable to, if not notably less than, the estimated cost of optimizing existing SCR (represented by $1,600 per ton). State-of-the-art combustion controls such as low-NO_X burners (LNB) and over-fire air (OFA) can be installed and/or updated quickly and can substantially reduce EGU NO_X emissions. In the 12 states linked to downwind receptors in this final rule, approximately 99 percent of coal-fired EGU capacity is equipped with some form of combustion control; however, the control configuration and/or corresponding emission rates at a few units indicate they do not currently have state-of-the-art combustion control technology. As discussed in EPA's response to comments below, the Agency has updated its NO_X emission rates for upgrading existing combustion controls to state-of-the-art combustion control from the proposed rule, where EPA estimated a range of 0.139 to 0.155 lbs/mmBtu. In this final rule, EPA is determining that NO_X emission rates of 0.146 to 0.199 lbs/mmBtu can be achieved on average depending on the unit's boiler configuration,[123] and, once installed, reduce NO_X emissions at all times of EGU operation.

The feasibility of installing combustion controls was examined by EPA in the CSAPR where industry demonstrated the ability to install state-of-the-art LNB controls on a large unit (800 MW) in under six months when including the pre-installation phases (design, order placement, fabrication, and delivery).[124] In the proposed rule, EPA discussed comments it had received on the CSAPR Update regarding installation of combustion controls from the Institute of Clean Air Companies.[125] Those comments provided information on the equipment and typical installation time frame for new combustion controls, accounting for all steps, and noted it generally takes between 6–8 months on a typical boiler—covering the time through bid evaluation through start-up of the technology. The deployment schedule was described as:

- 4–8 weeks—bid evaluation and negotiation
- 4–6 weeks—engineering and completion of engineering drawings
- 2 weeks—drawing review and approval from user
- 10–12 weeks—fabrication of equipment and shipping to end user site
- 2–3 weeks—installation at end user site
- 1 week—commissioning and start-up of technology

Given the above timeframe of approximately 6 to 8 months to complete combustion control installation in the region, EPA is determining that the installation of state-of-the-art combustion controls is a readily available approach for EGUs to reduce NO_X emissions by the start of the 2022 ozone season. More details on these analyses can be found in the EGU NO_X Mitigation Strategies Final Rule TSD.

The cost of installing state-of-the-art combustion controls per ton of NO_X reduced is dependent on the combustion control type and unit type. EPA estimates the cost per ton of state-of-the-art combustion controls to be $400 per ton to $1,200 per ton of NO_X removed using a representative capacity factor of 70 percent. See the NO_X Mitigation Strategies Final Rule TSD for additional details.

Comment: EPA received comment on the proposed timing, cost, and performance rate of combustion controls.

Response: EPA is finalizing its proposed assumptions on the cost and timing for upgrading combustion controls. These assumptions are consistent with the CSAPR Update. They are described above and further discussed in the RTC document and in the EGU NOx Mitigation Strategies Final Rule TSD. EPA is updating its assumed performance rate for state-of-the-art combustion controls from the proposed rule based on two factors. First, as commenters pointed out, EPA was in the process of updating these assumptions based on the latest representative-year data and an updated inventory of units with like controls. This update and corresponding emission rates were in the October 2020 NEEDS file placed in the docket for the proposed rule, but the data were not available in time to be included in EPA's proposed rule analysis. This adjustment raised the average emission rate assumption to 0.199 lb/mmBtu for combustion controls on dry bottom wall fired units and 0.146 lb/mmBtu for tangentially fired units. Additionally, commenters provided detailed analysis of how other unit considerations, such as coal rank, can result in large deviations from what has been historically demonstrated with this combustion control technology. Based

[121] *https://www.duke-energy.com/Our-Company/Environment/Global-Climate-Change.*

[122] Proctor, Darrell. *Indiana Utility Will Close Coal Units, Transition to Renewable.* Power Magazine. November, 2018. Available at *https://www.powermag.com/indiana-utility-will-close-coal-units-transition-to-renewables/.*

[123] Details of EPA's assessment of state-of-the-art NO_X combustion controls are provided in the EGU NO_X Mitigation Strategies Final Rule TSD.

[124] EPA finds that, generally, the installation phase of state-of-the-art combustion control upgrades—on a single-unit basis—can be as little as four weeks to install with a scheduled outage (not including the pre-installation phases such as permitting, design, order placement, fabrication, and delivery) and as little as six months considering all implementation phases.

[125] EPA–HQ–OAR–2015–0500–0093.

on these comments and EPA's review of historical performance data for tangentially-fired units by coal rank with state-of-the-art combustion controls, EPA determined it was appropriate to use the 0.199 lb/mmBtu rate for both tangentially and wall-fired units in this final rule. As noted by commenters, many of the likely impacted units burn bituminous coal, and the 0.146 lb/mmBtu nationwide average for tangentially-fired (inclusive of subbituminous units) appeared to be below the demonstrated emission rate of state-of-the-art combustion controls for bituminous coal units of this boiler type. EPA notes that its analysis of illustrative units indicates the costs are often lower than the $1,600 per ton level EPA assumes in this rule. Similarly, the pervasiveness of this technology (*i.e.,* 99 percent of units have some form of combustion controls) in response to previous EPA actions indicates the wide spread cost-effectiveness of this control and therefore its inclusion in the final EGU NOx emission budgets beginning in the 2022 ozone season (noting that the trading program gives units flexibility in compliance options to accommodate their specific circumstances).

c. Optimizing Already Operating SNCRs or Turning on Idled Existing SNCRs

Optimizing already operating SNCRs or turning on idled existing SNCRs can also reduce EGU NO_X emissions quickly, using investments in pollution control technologies that have already been made. Compared to no post-combustion controls on a unit, SNCRs can achieve a 25 percent reduction on average in EGU NO_X emissions (with sufficient reagent). They are less capital intensive but less efficient at NOx removal than SCRs. These controls are in use to some degree across the U.S. power sector. In the 12 states identified in this final rule, approximately 14 percent of coal-fired EGU capacity is equipped with SNCR. Recent power sector data suggest that, in some cases, SNCR controls have been operating less in 2019 relative to performance in prior years.[126]

In the proposed rule, EPA determined that optimizing already operating SNCRs or turning on idled SNCRs is an available approach for EGUs to reduce NO_X emissions, has similar implementation timing to restarting idled SCR controls (less than two months for a given unit), and therefore could be done in time for the 2021 ozone season. EPA is finalizing its proposed determination that this emission control technology can be implemented in the 2021 ozone season. As explained in section VI.D.1 below, EPA is including optimization of existing SNCRs in its selected EGU control stringency. Thus, EPA provides further discussion here confirming the implementation timing of this emission control technology.

First, as noted with respect to SCR optimization, this rule will have an effective date over two months from the date of signature. In light of EPA's timing estimates of roughly 0.5 to 2 months for EGU operators to optimize their controls, this timing provides sufficient advance notice for operators of SNCR-equipped units to undertake any preparatory activities that may be needed prior to the effective date of the rule, and the onset of the increased stringency represented by the new emission budgets. Furthermore, because the emission reduction obligation is implemented through a mass-based trading program, these sources (and all others in the newly established Group 3 trading program) have abundant flexibility to choose other means of complying with their emission budget. Finally, as explained in section VII.C.4.d, EPA is providing a safety valve allowing access to additional allowances usable in the Group 3 trading program (through exchange of banked 2017–2020 Group 2 allowances at an 18:1 conversion ratio). As the amount of additional Group 3 allowances made available through the safety valve mechanism exceeds the effect on the emission budgets of including the optimization of existing SNCR controls several times over, there is no basis to believe that there will be compliance difficulty for any covered units.

In the proposed rule, EPA estimated a representative cost of approximately $3,900 per ton for turning on and fully operating idled SNCRs. For existing SNCRs that have been idled, unit operators may need to restart payment of some fixed and variable operating costs associated with these controls. Fixed and variable costs include labor, maintenance and repair, parasitic load, and ammonia or urea. The majority of the total fixed and variable operating costs for SNCR is related to the cost of the reagent used (*e.g.,* ammonia or urea) and the resulting cost per ton of NO_X reduction is sensitive to the NO_X rate of the unit prior to SNCR operation. EPA is finalizing its adjusted representative cost of $1,800 per ton as described in the response to comments below, but applies the same performance, and timing assumptions for SNCRs that are idled as in the proposed rule.

Comment: Commenters observed that many SNCRs are already operating over the past several years (in an environment with an allowance price signal much lower than the $3,900 per ton threshold that EPA proposed represented turning on and optimizing idled controls). This observation suggests that the representative cost for this technology to optimize is likely less than estimated by EPA in the proposed rule when these operating patterns are accounted for.

Response: First, EPA examined the portion of the fleet with SNCR optimization potential and determined that the majority of units were already partially operating their controls. Therefore, EPA revisited the cost for SNCR optimization for units that are partially operating their controls. At proposal, EPA had noted a representative cost of $1,800 per ton for SNCR-controlled unit to optimize their controls if that control was already on and partially operating reflecting the cost of adding more reagent. This is similar to its analysis for SCR optimization that revealed an $800 per ton cost for SCR optimization at units with partially operating controls (as opposed to $1,600 per ton at units with idled SCR controls). EPA revisited this assessment of SNCR optimization cost at units with partially operating controls and found $1,800 per ton to still be a representative cost.[127] Therefore, given the majority of the SNCR-controlled fleet with identified optimization potential was already partially operating their controls based on 2019 historical data, EPA determined that $1,800 per ton (as opposed to the $3,900 per ton cost estimated in the proposed rule for turning on idled SNCRs) was a more representative cost for the mitigation strategy in this rulemakng. The representative cost of optimizing SNCR that is already partially operating excludes the fixed operating and maintenance (FOM) cost associated with starting up an idled SNCR control. For more details on this assessment, refer to the EGU NO_X Mitigation Strategies Final Rule TSD in the docket for this rule. This adjustment in the expected cost of implementing this emission control has factored into EPA's determination to include optimization of existing SNCRs in its selected control stringency as

[126] *See* ''Ozone Season Data 2018 vs. 2019'' and ''Coal-fired Characteristics and Controls'' at *https://www.epa.gov/airmarkets/power-plant-data-highlights#OzoneSeason.*

[127] See ''*EGU_SCR_and_SNCR_costs_Revised_CSAPR_Proposal.xlsx*''*file,* Summary Page cell E19. Available in the docket for this rulemaking at proposal at EPA–HQ–OAR–2020–0272–0006.

discussed in more detail in section VI.D.1.

d. Installing New SNCRs

EPA is finalizing its determination not to include installation of new SNCRs in its selected control stringency in this rule. The amount of time needed to retrofit an EGU with new SNCR extends beyond the 2021 Serious area attainment date. However, similar to SCR retrofits discussed in section VI.B.1.e, and consistent with the *Wisconsin* decision, EPA evaluated potential emission reductions and associated costs from this emission control technology, and assessed the impacts and need for this emission control at the earliest point in time when post combustion control installation could be achieved. SNCR installations, while generally having shorter project timeframes (*i.e.,* as little as 16 months (including pre-contract award steps) for an individual power plant installing controls on more than one boiler), share similar implementation steps with and also need to account for the same regional factors as SCR installations.[128] One recent example of installation timing took over a year—SNCR installation at the Jeffrey power plant (Kansas) was in the planning phase in 2013 but not in service until 2015.[129] Therefore, EPA is determining that at least 16 months would be needed to complete all necessary steps of SNCR development and installation at the EGUs not currently equipped with SNCRs in the 12 states linked to downwind receptors in this final rule. EPA discusses the timing of SNCR and SCR post-combustion retrofits together and in more detail in section VI.C.1.

SNCR technology provides owners a relatively less capital-intensive option for reducing NO_X emissions compared to SCR technology, albeit at the expense of higher operating costs on a per-ton basis and less total emission reduction potential. EPA examined the remaining nationwide coal-fired fleet that lack SNCR or other NO_X post-combustion control to estimate a representative cost of SNCR installation on a dollar per ton basis. Costs were estimated using the operating and unit characteristics specific to this fleet. As described in the EGU NO_X Mitigation Strategies Final Rule TSD, EPA estimated that $5,800 per ton reflects a representative cost level at which they are available for a majority of the uncontrolled fleet.

Comment: EPA received some comments on timing and performance assumptions of this technology that largely focused on the decision to couple timing considerations for reduction evaluation purposes of SCR and SNCR retrofits together.

Response: EPA used the same cost, performance, and timing assumptions for this technology as it used in the proposed rule. EPA evaluates new retrofit technologies (*i.e.,* SCR and SNCR) timing in tandem at step 3, and therefore it addresses this timing component in section VI.C.1. Remaining comments on SNCR performance potential are addressed in the RTC Document and in the EGU NOx Mitigation Strategies Final Rule TSD.

e. Installing New SCRs

The amount of time needed to retrofit an EGU with new SCR extends beyond the 2021 Serious area attainment date. However, similar to SNCR retrofits discussed above, and consistent with the *Wisconsin* decision, EPA evaluated potential emission reductions and associated costs from this control technology, as well as the impacts and need for this emissions control strategy, at the earliest point in time when their installation could be achieved. The amount of time to retrofit EGUs with new SCR varies between approximately 2 and 4 years depending on site-specific engineering considerations and on the number of installations being considered. In prior actions, EPA has noted 39–48 months as appropriate for regionwide actions when EPA is evaluating multiple installations at multiple locations.[130]

The Agency examined the cost for retrofitting a unit with new SCR technology, which typically attains controlled NO_X rates of 0.07 lbs/mmBtu or less. Based on the characteristics of the remaining nationwide coal fleet that does not have a post-combustion control retrofit, EPA estimated that for unit and performance characteristics representative of that subgroup, $9,600 per ton reflects a representative cost level at which the SCR retrofit technology was typically available for the majority of these sources.

Comment: EPA received comments on the cost and performance of this technology, as well as comment on its timing assumption (as part of the collective timing assumptions in step 3).

Response: For this final rule's analyses, EPA used the same cost, performance, and timing assumptions that it used for this technology in the proposed rule. For more details on this assessment, refer to the EGU NO_X Mitigation Strategies Final Rule TSD in the docket for this final rule and the RTC Document. Section VI.C.1 presents comments and EPA responses on the timing assumptions for installation of new SCRs.

f. Generation Shifting.

Finally, EPA evaluates emission reduction potential from generation shifting across the representative dollar per ton levels estimated for the other emission controls considered above. Shifting generation to lower NO_X-emitting or zero-emitting EGUs occurs in response to economic factors (including regulatory signals such as pollution control costs). As the cost of emitting NO_X increases, it becomes increasingly cost-effective for units with lower NO_X rates to increase generation, while units with higher NO_X rates reduce generation. Because the cost of generation is unit-specific, this generation shifting occurs incrementally on a continuum. Consequently, there is more generation shifting at higher cost NO_X-control levels. It is reasonable for EPA to quantify and include the emission reduction potential from generation shifting at cost levels that are representative of the emission control technologies evaluated in the multi-factor analysis. Including emission reductions from generation shifting is important, ensuring that other cost-effective reductions (*e.g.,* fully operating controls) can be expected to occur in a competitive electricity marketplace where generation shifting will inevitably occur in response to pollution control requirements. Generation shifting treatment and results are discussed in greater detail in the EGU NO_X Mitigation Strategies Final Rule TSD.

In general, when EPA estimates emission reduction potential from generation shifting, EPA finds small amounts of generation shifting to existing lower NO_X-emitting or zero-emitting units could occur consistent with the near-term implementation timing for this final rule. As a proxy for

[128] A month-by-month evaluation of SNCR installation is discussed in EPA's ''Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies'' in EPA's NO_X Mitigation Strategies Final Rule TSD. As noted in the proposed rule, the analysis in this exhibit estimates the installation period from contract award as within a 10–13-month timeframe. The exhibit also indicates a 16-month timeframe from start to finish, inclusive of pre-contract award steps of the engineering assessment of technologies and bid request development. The timeframe cited for installation of SNCR at an individual source in this final action is consistent with this more complete timeframe estimated by the analysis in the exhibit.

[129] 2013 EIA Form 860, Schedule 6, Environmental Control Equipment.

[130] Final Report: Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA–600/R–02/073 (Oct. 2002), available at *https://nepis.epa.gov/Adobe/PDF/P1001G0O.pdf.*

limiting the amount of generation shifting that is feasible for the near-term ozone seasons, EPA limits its assessment to shifting generation to other EGUs within the same state. EPA believes that limiting its evaluation of shifting generation (which EPA sometimes refers to as re-dispatch) to the amount that could occur within the state represents a conservatively small amount of generation-shifting because it does not capture further potential emission reductions that would occur if generation was shifted more broadly among units in different states within the interconnected electricity grid.

Comment: Commenters suggested that EPA should have included additional reductions from generation shifting beyond those levels that are commensurate with the emission controls identified. Commenters note that the statutory command is to eliminate significant contribution to downwind nonattainment or maintenance problems, 42 U.S.C. 7410(a)(2)(D)(i)(I), not merely to create a strong enough incentive that sources will likely install certain control technology. Because generation shifting is an independent measure that EGUs have widely deployed to reduce NO_X emissions, EPA has no basis for evaluating only the emission reductions that result from a NO_X price that matches—but goes no further than—the estimated representative NO_X control costs of other emission control technologies assessed.

Response: EPA is finalizing the same approach to generation shifting that it proposed and that it included in the CSAPR Update. This rule's approach to capturing emission reduction potential from generation shifting in the state's emission budgets focuses on preserving the incentive for combustion and post-combustion controls to operate. Factoring generation shifting into the state emissions budgets helps promote an allowance price that will incentivize these controls to operate.

EPA recognizes that looking at higher levels of reductions purely through generation shifting is possible, assuming the availability for dispatch of lower or zero emitting generation assets that could substitute for the higher emitting EGUs. Shifting to such generators that are already in existence and operating at capacity factors that allow for some increase in their generation is the most economically efficient form of generation shifting, assuming other considerations such as availability, cost, reliability, and other factors are accounted for. Even greater shifting of generation to lower or zero emitting assets may be considered with the construction of new assets, although cost, timing, and economic considerations are generally of a greater magnitude and complexity in this context. Sophisticated power sector modeling tools, such as EPA's Integrated Planning Model (IPM) platform, can provide realistic and reliable assessments of the degree of generation shifting that may be accomplished at different cost levels. Indeed, in the Regulatory Impact Analysis for the proposed rule and for this final rule, EPA assessed a less-stringent control alternative for EGUs at the $500 per ton level, which was based solely on generation shifting rather than any at-the-source control technology. In general, EPA continues to stand by its discussion of its legal authority for and the technical viability of generation shifting as a method of emission reduction under the good neighbor provision, as set forth in the final CSAPR Update rule. *See especially* 81 FR 74504, 74545–47; *see also* CSAPR Update Response to Comment Document at 546–550 (legal authority); *id.* 528–533 (technical feasibility). (EPA had no occasion and did not reopen this portion of the CSAPR Update in this action on remand.)

Nonetheless, while generation shifting as a stand-alone strategy for emission reductions is available for both states' and EPA's consideration in the context of good neighbor SIPs or FIPs, EPA maintains the position discussed in the proposed rule for this action that further generation shifting than is captured by the methodology of the proposed rulemaking is unnecessary in the context of the resolution of good neighbor obligations for the 2008 ozone NAAQS in this action. The remaining timeframe for addressing upwind contribution to downwind nonattainment and maintenance receptors is through the 2024 ozone season, as downwind air quality problems for the 2008 ozone NAAQS are projected to be resolved by the 2025 ozone season. In EPA's judgment, the capital intensive nature of new builds and the likely multi-year timeframe necessary for the permitting and construction of new units make generation shifting to new generating resources, beyond those already planned and included in the baseline, not possible before downwind receptors are already resolved. With respect to generation shifting to existing generation resources with excess capacity, again, this rule already incorporates a certain amount of such generation shifting at cost levels representative of the other control technologies selected to quantify the state emission budgets in this rule. EPA believes that this degree of emission reduction through generation shifting is appropriate to include under the step 3 multi-factor analysis for the circumstances and compliance timetable currently presented by the 2008 ozone NAAQS, particularly the finding that downwind receptors will be resolved under this NAAQS by the 2025 ozone season.

Comment: Other commenters suggest that EPA should not factor in any generation shifting based reductions into state emission budgets, noting that EPA rejected the use of generation shifting in rescinding the Clean Power Plan and should do the same here in establishing emission reduction obligations under the good neighbor provision of section 110 of the Clean Air Act. According to these commenters, the emission budgets should be based on cost-effective emission reduction strategies that reflect technologies that can be implemented within the affected source's fence line.

Response: EPA notes again that its treatment of generation shifting here is consistent with both the CSAPR Update and the CSAPR, and the statute. Moreover, this comment incorrectly conflates the question of statutory authority under section 111 of the Act, the authority at issue in the Clean Power Plan and its repeal and subsequent litigation, with the question of statutory authority under section 110. As EPA explained in the CSAPR Update:

> The good neighbor provision requires state and federal plans implementing its requirements to ''prohibit[ ] . . . *any source or other type of emissions activity within the State* from emitting any air pollutant in *amounts* which will'' significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. CAA section 110(a)(2)(D)(i)(I) (emphasis added). The EPA's consideration of the potential for generation shifting in developing state budgets is consistent with this statutory requirement. First, contrary to the commenters' contention, the statute does not limit the EPA's authority under the good neighbor provision to basing regulation only to control strategies for individual sources. The statute authorizes the state or EPA in promulgating a plan to prohibit emissions from ''any source or other type of emissions activity within the State'' that contributes (as determined by EPA) to the interstate transport problem with respect to a particular NAAQS. This broad statutory language shows that Congress was directing the states and the EPA to address a wide range of entities and activities that may be responsible for downwind emissions. However, this provision is silent as to the type of emission reduction measures that the states and the EPA may consider in establishing emission

reduction requirements, and it does not limit those measures to individual source controls. The EPA reasonably interprets this provision to authorize consideration of a wide range of measures to reduce emissions from sources, which is consistent with the broad scope of this provision, as noted immediately above. 81 FR 74545.[131]

Finally, EPA notes that its interpretation of section 111 of the Act as unambiguously precluding the use of generation shifting as a ''best system of emission reduction'' under that provision was recently rejected by the D.C. Circuit. *American Lung Association* v. *EPA,* No. 19–1140 (D.C. Cir. Jan. 19, 2021). The court there also rejected arguments that generation shifting in the Clean Power Plan runs afoul of the federalism doctrine, slip op. 92 (''Interstate air pollution is not an area of traditional state regulation. And federalism concerns do not bar the United States government from addressing areas of *Federal* concern just because its actions have incidental effects on areas of state power.'') (emphasis in original) (citing *FERC* v. *EPSA,* 136 S. Ct. 760, 775–778 (2016)), or conflicts with FERC's authority, *id.* 95 n.12 (''The effects of environmental regulations on the power grid do not amount to power regulation statutorily reserved to FERC.''). In this rule, as in prior transport rules, EPA has established emission budgets that capture a certain degree of generation shifting that is modeled to occur as an economical response by the power sector to a particular cost threshold associated with at-the-plant control technologies. EPA has not mandated or ordered any particular degree of generation shifting to occur or that it occurs in a particular way. Further, this action is related solely to air pollution, in this case NO_X as an ozone-precursor, and does not affect or purport to regulate any particular type of generation or achieve any type of generation mix, except as related to those NO_X emissions. *Cf. id.* 88 (''The Clean Power Plan was aimed not at regulating the grid, but squarely and solely at controlling air pollution—a task at the heart of the EPA's mandate.''). The budgets here simply reflect an expectation that the power sector can and will take advantage of the compliance flexibility of a mass-based emission trading program to shift generation when it is economical to do so in response to an environmental mandate.

Finally, EPA solicited comment on whether other ozone-season NO_X mitigation technologies should be considered. EPA invited comments on the cost and performance of the above listed technologies and any other potential mitigation technologies. For example, in January of 2020 the New York Department of Environmental Conservation adopted a rule to limit emissions from combustion turbines that operate as peaking units. EPA has not historically considered NO_X mitigation technologies for these sources in its rulemakings, such as the CSAPR and the CSAPR Update, but invited comment on their appropriateness for this rulemaking. Separately, location and high emission rates of grid-connected municipal solid waste combustors, generally not covered under EPA's transport rules given their small size and differing purpose, have also led some stakeholders to suggest mitigation measures be considered for those sources.

Comment: EPA received comments calling on the Agency to reduce NO_X from peaking units and municipal waste combustors and claimed that the agency's focus in its proposed rule on the suite of EGU emission controls above failed to address large sources of NO_X emissions that are relatively close to the Connecticut receptors. Some of these commenters go one step further and say not only should EPA regulate these sources, but that EPA should only require emission reductions from local sources in place of reductions from larger emitting sources upwind.

Response: EPA is finalizing its evaluation of the same suite of emission controls as in the proposed rule. EPA notes that several states close to, or that have, nonattainment or maintenance receptors are already taking some of these measures. For example, New York finalized the state regulation mentioned above and New Jersey notes in their comment that the measures documented in New Jersey's Good Neighbor SIP include controls for sources such as behind-the-meter distributed generation/demand response (DG/DR) electric generators and municipal waste combustors. Even with these local measures, nonattainment and maintenance receptors persist in the region with demonstrable upwind state contribution, and thus the presence of these initiatives does not absolve upwind states and sources from the responsibility of addressing their significant contribution.[132] In the proposed rule, EPA inquired whether these additional emission controls should be considered in addition to, not in place of, the other proposed controls. EPA did not receive determinative evidence that (1) there were meaningful, upwind reductions from these emission controls that are not already being addressed by state rules, or (2) that any further reductions could be implemented in a timeframe consistent with the remaining nonattainment and maintenance receptors that resolve after 2024. EPA notes the New York rule referenced above was finalized in early 2020, but its control measures will phase in during the 2023–2025 period. Therefore, EPA is not finalizing any additional reductions from new control measures at these sources in this final rule, but, pending further analysis, doing so may be appropriate in a future context (*e.g.,* under a different NAAQS). Finally, EPA notes to the extent that any of the sources meet the applicability requirements and are covered in the Group 3 trading program under this rulemaking, they would have an incentive to reduce emissions consistent with the ozone NO_X allowance price. Moreover, as identified in the discussion the EGU NO_X Mitigation Final Rule TSD, a significant number of units with this technology are located in states with rules addressing those sources.

2. Non-EGU NO_X Mitigation Strategies

EPA has not regulated emissions from non-EGU sources as part of its regional transport rulemakings since the 1998 NO_X SIP Call. In *Wisconsin,* the DC Circuit held that EPA must, on remand, implement a full remedy by the next attainment date (2021 for this final rule), or as soon as possible thereafter on a showing of impossibility, to achieve necessary reductions by that date. 938 F.3d at 320. The court also directed the Agency to address non-EGU sources, unless ''the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment.'' *Id.* at 318–20 (quoting *Massachusetts* v. *EPA,* 549 U.S. 497, 534 (2007)). The DC Circuit found that the practical obstacles EPA identified with respect to its evaluation of non-EGUs in the CSAPR Update did not rise to the level of an ''impossibility,'' *id.* The court also found that EPA must make a higher

[131] EPA also noted in the CSAPR Update, ''Interpreting the Good Neighbor Provision to be sufficiently broad to authorize reliance on generation shifting is also consistent with the legislative history for the 1970 CAA Amendments. The Senate Report stated that to achieve the NAAQS, '[g]reater use of natural gas for electric power generation may be required,' S. Rep. No. 91–1196 at 2.'' 81 FR 74545 n.141.

[132] For instance, despite these measures, EPA does not agree with comments from New Jersey that there is therefore no basis for including New Jersey in the Group 3 trading program in this action. New Jersey is projected to remain linked to the Connecticut receptors well above the 1 percent threshold.

showing of uncertainty regarding non-EGU point-source NO_X mitigation potential before declining to regulate such sources on the basis of ''uncertainty.'' *Id.* Thus, in the proposed rule, EPA extended its analysis to include all major stationary source sectors in the linked upwind states, including non-EGU emissions sources in various industry sectors. As discussed in section V, of the 22 states originally included in the CSAPR Update, EPA has determined that 12 states warrant analysis at step 3 for significant contribution to downwind nonattainment and/or maintenance receptors for the 2008 ozone NAAQS. Therefore, the Agency focused its step 3 assessment on non-EGU sources in these 12 states. For these sources, EPA retained its focus on NO_X as the most effective precursor pollutant for addressing interstate ozone transport at a regional scale. *See* 82 FR 51238, 51248 (Nov. 3, 2017) (citing 76 FR 48222) and 63 FR 57381.

The remainder of this section summarizes the analysis EPA conducted in the proposed rule. EPA is finalizing this analysis using the best available current data, largely as proposed, and determines on the basis of this analysis that emission reductions from non-EGU sources/units in the 12 states are not needed to eliminate their significant contribution to nonattainment or interference with maintenance in any other state. EPA made some minor updates to its analysis of non-EGU emission reduction potential, and these changes did not affect its overall conclusion that reductions are not warranted under the step 3 multi-factor test. EPA responds to significant comments on its assessment of non-EGU emission reduction potential at the end of the relevant section below, and addresses remaining comments on potential non-EGU emission reductions in the RTC document located in the docket for this action.

For non-EGU sources, there are many types of emissions sources or units that emit NO_X and many control technologies or combinations of control technologies for these sources or units. As such, there are many approaches to assessing emission reduction potential from non-EGU emission sources or units. In this final rule, EPA applied the multi-factor test used for EGUs in an effort to determine an appropriate stringency level for non-EGU sources/units in linked upwind states. EPA identified available control technologies and estimated their costs and potential emission reductions. The Agency considered the information it has regarding control technology implementation timeframes, including information on such timeframes provided by commenters on the proposed rule, to determine potential air quality impacts in relevant future years.

To identify levels of control for non-EGU sources/units, EPA used the Control Strategy Tool (CoST),[133] the Control Measures Database (CMDb), and the projected 2023 inventory from the 2016v1 modeling platform. EPA assessed potential emission reductions associated with applying controls to emissions units with 150 tons per year (tpy) or more of pre-control NO_X emissions in 2023, which is an emissions threshold that represents a comparable unit size to 25 MW for EGUs used in prior interstate transport rulemakings. To derive this emissions threshold, EPA used emissions expected from an average 25 MW EGU unit operating at a median heat rate, emission rate, and capacity factor for a coal-fired unit.[134] In CoST, the Agency used the maximum emission reduction strategy[135] to estimate the largest quantity of potential emission reductions from each emissions source or unit located in the 12 upwind states linked to downwind receptors in this final rule. Eleven of the 12 upwind states had sources/units with 150 tpy or more of pre-control NO_X emissions in 2023; the projected 2023 emissions inventory did not include non-EGU point sources/units in New Jersey with pre-control NOx emissions greater than 150 tpy for which CoST had applicable control measures.[136]

For the 12 linked states, EPA categorized the CoST results for control technologies that comprise approximately 92 percent of the total estimated potential emission reductions from the non-EGU sources/units with 150 tpy or more of NO_X emissions in these states; [137] those technologies and related emissions sources/units are summarized in Table VI.B.2–1 below. In tranche one before further refinement and verification, the number of emissions units CoST applied SCR to was 51 and the number of emissions units CoST applied SNCR to was 23. The estimated emission reductions from those control applications were 12,724 ozone season tons. In tranche two, before further refinement and verification, the number of emissions units to which CoST applied layered combustion (a type of combustion control technology) was 49, the number of emissions units to which CoST applied NSCR [138] or layered combustion was 65, and the number of emissions units to which CoST applied ultra-low NOx burner and SCR was 56. The estimated emission reductions from those control applications were 17,283 ozone season tons. EPA then calculated a weighted average cost per ton (in 2016$) for estimated potential reductions associated with each control technology and plotted the weighted average cost per ton values. From the resulting curve, EPA identified a clear break point that defined two tranches of potential emission reduction, as shown in Table VI.B.2–1. For additional details on the curve and the potential emission reductions in tranches one and two, please see the memorandum titled *Assessing Non-EGU Emission Reduction Potential,* available in the docket for this rule.

[133] Further information on CoST can be found at the following link: *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-analysis-modelstools-air-pollution.*

[134] For additional details on calculating the 150 tpy emissions threshold, please see the section titled *Background for Determining Source Size/Threshold for Non-EGU Emissions Sources* in the memorandum titled *Assessing Non-EGU Emission Reduction Potential,* available in the docket for this rule.

[135] The maximum emission reduction algorithm assigns to each source the single measure (if a measure is available for the source) that provides the maximum reduction to the target pollutant, regardless of cost. For more information, see the CoST User's Guide available at the following link: *https://www.cmascenter.org/cost/documentation/3.5/CoST%20User's%20Guide/.*

[136] Total NOx emissions at the facility level in this analysis are likely much larger than NOx emissions at the emissions source/unit level, and facilities often have several individual emissions units. In New Jersey there are facilities with total NOx emissions greater than 150 tpy. EPA did not, however, identify any individual emissions units at those facilities with pre-control NOx emissions greater than 150 tpy for which CoST had applicable control measures.

[137] CoST applied a few additional controls that are not commonly used and did not result in significant additional emission reductions. Ten different control technology applications make up the remaining 8 percent of the control technology applications. Compared to the five technologies EPA assessed further, these ten control technology applications do not, individually or collectively, have the potential to result in significant additional emission reductions. For additional details, see the technical memorandum titled *Assessing Non-EGU Emission Reduction Potential* and the Excel workbook titled *Control Summary—Max Emission Reduction $10k 150 tpy cutoff 12 States Updated Modeling—No Replace—05–18–2020.xlsx* in the docket for this rule.

[138] NSCR is non-selective catalytic reduction, a control technology applicable to rich-burn natural gas-fired internal combustion (IC) engines.

TABLE VI.B.2–1—DETAILS ON TRANCHES ONE AND TWO OF POTENTIAL EMISSION REDUCTIONS

Tranche	Technologies/industry sectors or source groups	Weighted average cost (2016$ per ton)	Cost range (2016$ per ton)
Tranche One	SCR/Glass Manufacturing, IC Engines SNCR/Cement Manufacturing	2,000	[139] 64–5,700
Tranche Two	Layered Combustion/Lean Burn IC Engines NSCR or Layered Combustion/Industrial Rich Burn Natural Gas IC Engines Ultra-low NO_X Burner and SCR/Industrial Boilers	5,000–6,600	1,400–9,700

Given the large number of emissions units in one or more industry sectors that could require control installation, EPA does not have detailed information on the time needed to install all of the control technologies identified in Table VI.B.2–1. Any installation timing estimates would need to reflect the time needed to install controls across a potentially large number of sources, the time needed to have appropriate NO_X monitoring installed, the time needed to raise the necessary financing, and other steps in the permitting, construction and procurement processes. EPA previously examined the time necessary to install some of the controls indicated in Table VI.B.2–1 for different industries in the 2016 *Final Technical Support Document (TSD) for the Final Cross-State Air Pollution Rule for the 2008 Ozone NAAQS, Assessment of Non-EGU NO_X Emission Controls, Cost of Controls, and Time for Compliance Final TSD* (''CSAPR Update Non-EGU TSD''), which is discussed in section VI.C.2. EPA expects that the controls for glass furnaces and cement kilns would take at least 2 years to install on a sector-wide basis across the 12-state region affected by this final rule. Information available to the Agency, including information provided by commenters, does not establish that implementation of NO_X control technologies for non-EGU emission sources/units could take place in less than 2 years. Therefore, EPA has determined that the 2023 ozone season is the earliest ozone season by which these non-EGU controls could be installed. EPA thus concludes that no NO_X controls for non-EGUs included in this cost analysis can be installed by the 2021 ozone season. Additional information on installation times for non-EGU NO_X controls can be found in section VI.C.

3. Mobile Source NO_X Mitigation Strategies

Under a variety of CAA programs, EPA has established federal emissions and fuel quality standards that reduce emissions from cars, trucks, buses, nonroad engines and equipment, locomotives, marine vessels, and aircraft (*i.e.,* ''mobile sources''). Because states are generally preempted from regulating new vehicles and engines with certain exceptions (*see generally* CAA sections 209, 177), mobile source emissions are primarily controlled through EPA's federal programs. EPA has been regulating mobile source emissions since it was established as a federal agency in 1970, and all mobile source sectors are currently subject to NO_X emissions standards. EPA factors these standards and associated emission reductions into its baseline air quality assessment in good neighbor rulemaking, including in this action. Such reductions are an important reason for the historical and long-running trend of improving air quality in the United States. These trends help explain why the overall number of receptors and severity of ozone nonattainment problems under the 2008 ozone NAAQS continues to decline. Such data are factored into EPA's analysis at steps 1 and 2 of the 4-step framework. As a result of this long history, NO_X emissions from onroad and nonroad mobile sources have substantially decreased (73 percent and 57 percent since 2002, for onroad and nonroad, respectively) [140] and are predicted to continue to decrease into the future as newer vehicles and engines that are subject to the most recent, stringent standards replace older vehicles and engines.[141]

For example, in 2014 EPA promulgated new, more stringent emissions and fuel standards for light-duty passenger cars and trucks.[142] The fuel standards took effect in 2017, and the vehicle standards are phasing in between 2017 and 2025. Other EPA actions that are continuing to reduce NO_X emissions include the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5002; January 18, 2001); the Clean Air Nonroad Diesel Rule (69 FR 38957; June 29, 2004); the Locomotive and Marine Rule (73 FR 25098; May 6, 2008); the Marine Spark-Ignition and Small Spark-Ignition Engine Rule (73 FR 59034; October 8, 2008); the New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder Rule (75 FR 22895; April 30, 2010); and the Aircraft and Aircraft Engine Emissions Standards (77 FR 36342; June 18, 2012).

EPA is currently developing a new regulatory effort to reduce NO_X and other pollution from heavy-duty trucks (known as the Cleaner Trucks Initiative), as described in the January 21, 2020, Advance Notice of Proposed Rulemaking (85 FR 3306). Heavy-duty vehicles are the largest contributor to mobile source emissions of NO_X and will be one of the largest mobile source contributors to ozone in 2025.[143] Reducing heavy-duty vehicle emissions nationally would improve air quality where the trucks are operating as well as downwind. As required by CAA section 202(a)(3)(A) of the Act, EPA will be proposing NO_X emission standards that ''reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.'' Section 202(a)(3)(C)

[139] For the emissions unit estimated to generate emission reductions at $64 per ton, the emissions and cost estimates were incorrect. The 2023 projected emissions for the unit were significantly overestimated as a result of a growth factor EPA received for these emissions from a multi-jurisdictional partner organization. Further, the equation used to estimate the cost was mis-specified in CoST, and the true cost is likely on the order of $800 per ton. However, these emission reductions were still assessed, as discussed in section VI.C.2 below.

[140] U.S. EPA. Our Nation's Air: Status and Trends Through 2019. *https://gispub.epa.gov/air/trendsreport/2020/#home.*

[141] National Emissions Inventory Collaborative (2019). 2016v1 Emissions Modeling Platform. Retrieved from *http://views.cira.colostate.edu/wiki/wiki/10202.*

[142] Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards, 79 FR 23414 (April 28, 2014).

[143] Zawacki et al, 2018. Mobile source contributions to ambient ozone and particulate matter in 2025. Atmospheric Environment. Vol 188, pg 129–141. Available online: *https://doi.org/10.1016/j.atmosenv.2018.04.057.*

requires that standards apply for no less than 3 model years and apply no earlier than 4 years after promulgation.

Given these requirements, EPA is considering implementation of new heavy-duty NO_X emission standards beginning in model year 2027. In addition, any new rulemaking process for other mobile source sectors would not achieve actual NO_X emission reductions before 2025, given the lead time necessary for EPA and for manufacturers.

However, EPA's existing regulatory program will continue to reduce NO_X emissions into the future, and EPA is currently taking active steps to ensure that these NO_X reductions occur. The CAA prohibits tampering with emissions controls, as well as manufacturing, selling, and installing aftermarket devices intended to defeat those controls. EPA currently has a National Compliance Initiative called ''Stopping Aftermarket Defeat Devices for Vehicles and Engines,'' which focuses on stopping the manufacture, sale, and installation of hardware and software specifically designed to defeat required emissions controls on onroad and nonroad vehicles and engines.

C. Emission Reduction Potential of Control Stringencies

1. EGU Emission Reduction Potential

For EGUs, as discussed in section VI.A, the multi-factor test considers increasing levels of uniform control stringency in combination with consideration of total NO_X reduction potential and corresponding air quality improvements. EPA evaluated EGU NO_X emission controls that are widely available (described previously in section VI.B.1), that were assessed in previous rules to address ozone transport, and that have been incorporated into state requirements to address ozone nonattainment.

The tables below summarize the emission reduction potentials (in absolute ozone season tons) from these emission controls across the 12-state region. Table VI.C.1–2 focuses on near-term mitigation emission controls while Table VI.C.1–3 includes emission controls with extended time frames for implementation.

TABLE VI.C.1–2—EGU OZONE-SEASON EMISSION REDUCTION POTENTIAL—2021

State	Baseline 2021 OS NO_X	Reduction potential (tons) for varying levels of technology inclusion		
		SCR optimization	SCR optimization + LNB upgrade	SCR/SNCR optimization + LNB upgrade
Illinois	9,368	171	171	267
Indiana	15,856	2,771	2,771	2,805
Kentucky	15,588	282	1,531	1,538
Louisiana	15,476	87	87	658
Maryland	1,501	1	1	1
Michigan	13,898	1,166	1,284	1,288
New Jersey	1,346	92	92	92
New York	3,469	53	53	53
Ohio	15,829	6,140	6,140	6,140
Pennsylvania	11,896	3,517	3,517	3,517
Virginia	4,664	50	320	380
West Virginia	15,165	1,479	1,960	2,281
Total	124,057	15,809	17,927	19,021

*EPA shows reduction potential from state-of-the-art LNB upgrade as a near-term reduction emission control but explains in sections VI.B and VI.D that this reduction potential would not be implemented until 2022. Sum of state values may vary slightly from total due to rounding.

TABLE VI.C.1–3—EGU OZONE-SEASON EMISSION REDUCTION POTENTIAL—2025

State	Baseline 2025 OS NO_X	Reduction potential (tons) for varying levels of technology inclusion*			
		SCR optimization + LNB upgrade	SCR/SNCR optimization + LNB upgrade	SCR/SNCR optimization + LNB upgrade + SNCR retrofit + generation shifting	SCR/SNCR optimization + LNB upgrade + SCR retrofit + generation shifting
Illinois	8,281	138	233	1,053	1,401
Indiana	12,232	2,648	2,668	3,309	3,802
Kentucky	14,551	1,199	1,205	2,755	5,022
Louisiana	15,476	87	659	1,098	2,854
Maryland	1,350	2	2	181	181
Michigan	11,009	1,205	1,209	2,331	3,656
New Jersey	1,346	92	92	89	89
New York	3,456	53	53	159	159
Ohio	15,927	6,155	6,155	6,284	6,706
Pennsylvania	11,896	3,523	3,523	3,975	4,045
Virginia	4,162	323	367	417	850
West Virginia	15,165	1,960	2,281	2,328	4,597

TABLE VI.C.1–3—EGU OZONE-SEASON EMISSION REDUCTION POTENTIAL—2025—Continued

State	Baseline 2025 OS NO_X	Reduction potential (tons) for varying levels of technology inclusion*			
		SCR optimization + LNB upgrade	SCR/SNCR optimization + LNB upgrade	SCR/SNCR optimization + LNB upgrade + SNCR retrofit + generation shifting	SCR/SNCR optimization + LNB upgrade + SCR retrofit + generation shifting
Total	114,850	17,384	18,448	23,978	33,363

*Both tables VI.C.1–2 and VI.C.1–3 include limited generation shifting (reflecting that which would occur at the price level consistent with control operation). It does not factor in generation shifting reduction potential that may be attributable to incremental new builds or incremental retirements. Sum of state values may vary slightly from total due to rounding.

Comment: Some commenters suggested that the emission reduction estimates for an identified technology needed to be updated based on new or updated data.

Response: EPA has updated the total emission reduction potential for each technology based on information provided by commenters. Further details are provided in the RTC Document included in the docket, the EGU NOx Mitigation Strategies Final Rule TSD, and in the Ozone Transport Policy Analysis Final Rule TSD. In summary, comments containing new data, information, or analysis that resulted in changes to the values in the tables above included information on (1) shared stack emissions apportionment, (2) updated information and data on retirements and new builds, (3) updated information and data on combustion control performance, and (4) and updated information on SNCR optimization cost. In the first three instances, the resulting impact was a change in the inventory of units with identified emission reduction potential (and therefore overall emission reduction potential from that category). For instance, multiple commenters provided EPA with data on shared stack emissions apportionment not readily available in unit-level data reported to EPA. In some cases where stack data are measured and reported, and that stack is shared by two units (one with an SCR and one without), the apportionment method of those reported stack emissions for reporting purposes is heat input-based and therefore may not reflect the unit-level operation of the control at that unit, even when that control is operating. In other words, it may have apportioned those stack emissions (*e.g.,* 10 tons) as 5 tons to each unit, while the actual operation is 9 tons from the uncontrolled unit and 1 ton from the controlled unit. This can give the appearance of a controlled unit emitting above the optimized rate, when in fact it is already operating below the 0.08 lb/mmBtu threshold. Similar to the CSAPR Update, EPA incorporated the information from this comment and new data into this final rule, and EPA has adjusted the Agency's inventory of units that may have SCR reduction potential accordingly. Likewise, EPA received some updated information on unit-level retirement status such as changes to the retirement status of the Colver Power Plant in Pennsylvania and the Pleasants Power Station in West Virginia. As these units are no longer retiring, their retirement is not factored into the step 3 baseline or resulting state emission budgets. Similarly, EPA also incorporated comments and new data regarding new units expected to come online and retiring units expected to go offline after 2019 but prior to 2024 ozone season.[144] Also, as noted above, EPA updated its performance rate assumption for LNB controls based on updated data and comments, resulting in less emission reduction potential from this technology category. Finally, the emission reduction levels associated with SNCR optimization were updated to be consistent with the representative cost (and commensurate generation shifting-based reductions) adjustments discussed above.

Comment: Some commenters asserted that EPA should change its timing assumptions for post-combustion control retrofits by parsing out different timing assumptions for SNCR and SCR retrofits. They claim that doing so would result in more emission reductions available starting in earlier years (*e.g.,* 2023) given that SNCR retrofit technology could be installed by that year.

Response: EPA is finalizing the same timing assumptions that it proposed for the installation of post-combustion controls. As discussed in section VI.B.1.e and noted in prior actions, EPA generally views 39–48 months as an appropriate implementation timeframe for regionwide installation of new post-combustion control technologies when EPA is evaluating multiple installations at multiple locations. As discussed further below, this is primarily based on SCR retrofit rather than SNCR. The period from finalization of this rule until the start of the 2024 ozone-season would allow less than 39 months for post combustion controls to be regionally installed and operating. The 2025 ozone season represents a period approximately 48 months after finalization of this rule and reflects a more demonstrably possible window for making retrofits on a regional scale. Therefore, EPA finds that 2025 is the earliest ozone season by which new SNCR or SCR may be installed across multiple EGUs on a regional basis.

Installing new SCR or SNCR controls for EGUs generally involves the following steps: Conducting an engineering review of the facility to determine suitability and project scope; advertising and awarding a procurement contract; obtaining a construction permit; installing the control technology; testing the control technology; and obtaining or modifying an operating permit. These timeframes are intended to accommodate a plant's need to conduct an engineering assessment of the possible NO_X mitigation technologies necessary to then develop and send a bid request to potential suppliers. Control specifications are variable based on individual plant configuration and operating details (*e.g.,* operating temperatures, location restrictions, and ash loads). Before making potential large capital investments, plants need to complete these careful reviews of their system to inform and develop the control design they request. They then need to solicit bids, review bid submissions, and award a procurement

[144] EPA relied on unit-level data from the proposal, commenter data, and the latest EIA Form 860m (October 2020) available at the time of the final rule analysis.

contract—all before construction can begin.

Scheduled curtailment, or planned outage, for pollution control installation would also be necessary to complete SCR or SNCR projects on a regional scale. Given that peak demand and rule compliance would both fall in the ozone season, sources would likely need to schedule installation projects for the ''shoulder'' seasons (*i.e.,* the spring and/or fall seasons), when electricity demand is lower than in the summer, reserves are higher, and ozone season compliance requirements are not in effect. If multiple units were under the same timeline to complete the retrofit projects as soon as feasible from an engineering perspective, this could lead to bottlenecks of scheduled outages as each unit attempts to start and finish its installation in roughly the same compressed time period. Thus, any compliance timeframe that would assume installation of new SCR or SNCR controls should be developed to reasonably encompass multiple shoulder seasons to accommodate scheduling of curtailment for control installation purposes and better accommodate the regional nature of the program.[145]

Finally, the time lag observed between the planning phase and in-service date of SCR operations in certain cases also illustrates that site-specific conditions can lead to installation times of four years or longer—even for individual power plants. For instance, SCR projects for units at the Ottumwa power plant (Iowa), Columbia power plant (Wisconsin), and Oakley power plant (California) were all in the planning phase in 2014. By 2016, these projects were under construction with estimated in-service dates of 2018.[146] Further, large-scale projects also illustrate that timelines can extend beyond the general estimate for a single power plant when the project is part of a larger, multifaceted air pollution reduction goal. For instance, the Big Bend power plant in Florida completed a multifaceted project that involved adding SCRs to all four units as well as converting furnaces, over-fire air changes, and making windbox modifications, during which a decade elapsed between the initial planning stages and completion.[147]

EPA notes that differences between these control technologies exist with respect to the potential viability of achieving cost-effective, regional NO_X reductions from EGUs. SCR controls generally achieve greater EGU NO_X reduction efficiency (up to 90 percent) than SNCR controls (25 percent). EPA observes that for the remaining uncontrolled coal fleet in the 12 states, SCRs are, on average, more expensive on a cost per ton basis. However, the analysis in the EGU NO_X Mitigation Strategies Final Rule TSD notes that the cost range varies widely for units depending on inlet NO_X rate and capacity factor. Therefore, for some units, it is possible that SCR retrofit costs are lower than SNCR costs on a cost per ton basis. Moreover, there are a host of other market and policy drivers that may lead a specific unit to prefer an SCR retrofit over an SNCR retrofit. As a result, EPA finds it is reasonable to allow sufficient time for EGU operators to select installation of SCR in response to a multi-state emission control program whose emission budgets would reflect emission reductions from new post-combustion controls. Therefore, EPA is using an SCR-inclusive planning and installation schedule to represent new post-combustion retrofit potential on a regional basis (be it SNCR or SCR as determined by individual EGU owners under our flexible market-based emission trading program).

Furthermore, SNCR installation at an individual source would render later installation of an SCR less cost-effective, because such a unit would have already expended some unrecoverable capital on the less-effective pollution control technology. As a result, it would be counterproductive to assume EGUs should install the less effective SNCR control technology to address a short-run air quality concern under an older and less stringent NAAQS when it may later prove necessary to require the more effective SCR control technology to address longer-run air quality concerns under a more stringent NAAQS for the same pollutant. Considering these factors, EPA finds it is appropriate to give particular weight to the timeframe required for implementation of SCR across the region as compared to SNCR to allow sources the flexibility to make the most efficient post-combustion control investment. Historically, units have chosen to retrofit with higher performing SCR at a much greater rate than they have chosen SNCR. For SCR, the total time associated with project development is estimated to be up to 39 months for an individual power plant installing controls on more than one boiler. However, more time is needed when considering installation timing for new SCR controls regionally. EPA has previously determined that a minimum of 48 months (four years) is a reasonable time period to allow to complete all necessary steps of SCR projects at EGUs on a regional scale. This timeframe would allow for regional implementation of these controls (*i.e.,* at multiple power plants with multiple boilers) considering the necessary stages of post-combustion control project planning, shepherding of labor and material supply, installation, coordination of outages, testing, and operation.[148]

In addition to its engineering assessment, EPA looked at historical data to validate this 39–48 month installation timeframe. EPA observed over 12 GW of uncontrolled coal capacity in the linked states covered in this rule. For comparison, EPA looked at the last 15 years of data to see if a similar amount of capacity had come online in a shorter time frame. It observed that it had not. Most notably, the CAIR was finalized in March of 2005 covering much of the Eastern U.S. and drove significant SCR retrofit activity, with incentives for early installation and reductions. From this date, 39–48 months would have placed the SCRs online in the mid 2008 to 2009 time frame. The graphic below illustrates an uptick in coal-fired capacity retrofitted with SCRs in response to the rule (Figure VI.D.2). Most of this capacity comes online in 2009 and 2010. Although EPA's data on when sources started planning these controls and whether it was driven purely by CAIR or other factors are not perfect, the Agency finds the chart below consistent with its determination that a 39–48 month time frame is reasonable for SCR retrofit possibility on a regional level.

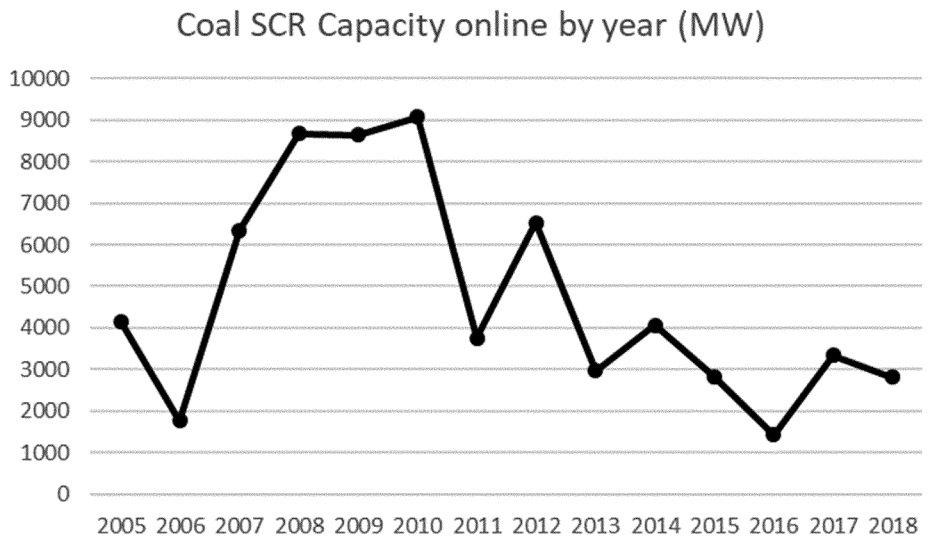
[145] The workforce disruption experienced at the onset of the COVID–19 pandemic has resulted in a backlog of scheduled outages for power plant maintenance. According to Genscape, PJM (a regional transmission organization covering a substantial portion of the EGUs affected by this rule) observed a shortfall of more than a quarter of planned outages for power plant maintenance in the spring 2020 shoulder season. Finn, Pat; Szumloz, Zach; Gordon, Elliot. *Impacts of the Coronavirus on the PJM Power Market, Taking a Closer Look at Demand, Supply, Energy Prices, and Congestion. Genscape, A Wood Mackenzie Business. April 2020.*

[146] 2014 EIA Form 860. Schedule 6. Environmental Control Equipment.

[147] Big Bend's Multi-Unit SCR Retrofit. Power Magazine. March 1, 2010. Available at *http://www.powermag.com/big-bends-multi-unit-scr-retrofit/.*

[148] Final Report: Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA—600/R–02/073 (Oct. 2002), available at *https://nepis.epa.gov/Adobe/PDF/P1001G0O.pdf.*

Figure 1 to Section VI.C.- SCR Capacity (MW) as a Function of Online Year.



Comment: EPA received comment on the timing assumptions regarding SCR and SNCR retrofit. Commenters noted that EPA should require SNCR installation as it can be installed in as little as 16 months, and that EPA's reliance on SCR timing to justify not considering SNCR is not reasonable given that EPA is not considering SCR installation. Moreover, the commenter also suggested that if these controls are not available on a region-wide level by the start of 2024, that EPA should still include them for a limited number of units (*e.g.,* 30 percent of the unretrofitted fleet) as the Clean Air Act requires that upwind states limit emissions ''as expeditiously as practicable.''

Response: EPA believes its proposed collective timing assumptions for post-combustion control retrofit are practicable given that the preferable capital-intensive investment retrofit decision would be highly unit-specific and subject to a unit's compliance strategy choices with respect to multiple regulatory requirements. For the reasons described above, EPA believes that separating the post-combustion retrofit timing consideration would create a framework that potentially inhibits greater emission reductions from technologies like SCR that may be both preferable to the unit's operator and beneficial to overall emission reductions. While the commenter observed that SCR installation is not included as part of EPA's proposed control stringency, states and EPA may consider requiring this emission control technology to address good neighbor obligations or other attainment planning requirements for the 2015 ozone NAAQS or other CAA programs. Therefore, while the commenter suggests that the exclusion of new SCR installations from the control stringency selected for this rule should result in the decoupling of SNCR and SCR for timing considerations, EPA observes that the broader regulatory context potentially presents situations where a better performing emission reduction technology is the preferred retrofit choice. If EPA were to ignore the observation that this post-combustion retrofit technology decision is a binary choice, as these technologies substitute for rather than complement one another, it would potentially eliminate or make more costly the eventual decision to implement a better performing SCR technology by implementing on a schedule that did not allow for that compliance strategy.

With regard to the suggestion that, if it is not possible to require all non-retrofitted units to install new controls, EPA should at least require some units to retrofit with SNCR and SCR, EPA observed that doing so would result in making selective choices about which linked upwind states should face more stringent requirements and would upset the uniform control stringency scheme allowing for ''equitable and efficient'' implementation of good neighbor obligations. *EME Homer City,* 572 U.S. at 519. In addition, it would necessitate far greater unit-level analysis, which would likely have prevented EPA from finalizing a rule in time to implement reductions for the 2021 ozone season.

2. Non-EGU Emission Reduction Potential

EPA performed a similar analysis of reduction potential for the non-EGU mitigation technologies identified, as discussed in section VI.B.2 of this notice. EPA's assessment of emission reduction potential from the controls in the tranches reflects ongoing uncertainty resulting from the quality of the current information available to the Agency. This uncertainty has been addressed to some extent through further research conducted since the proposed rule. Because information for existing controls on non-EGU emissions sources is missing in the 2016 base year inventory for some states and incomplete for some sources, EPA went through a process in the proposed rule to further verify existing control information and refine the NO_X emission reduction potential estimated by CoST, the CMDb, and the 2023 projected inventory. In the proposed rule EPA focused its verification and refinement efforts on those upwind states with the largest estimated potential air quality impacts from potential non-EGU emission reductions. Since the proposed rule, EPA extended its verification and refinement efforts to several additional linked states.

In the proposed rule, EPA identified two tranches of controls for non-EGU emissions sources/units associated with two levels of weighted average cost per ton. EPA assumed that the potential reductions in tranche one were likely cost-effective because tranche one's weighted average cost of $2,000 per ton is similar to the identified control stringency for EGUs represented by

$1,800 per ton (see section VI.D.1). The additional steps EPA took, discussed in more detail below, included:

- Looked at potential emission reductions in tranche one that were estimated to cost less than $2,000 per ton; and
- For those potential reductions in tranche one that were estimated to cost less than $2,000 per ton, reviewed online facility permits and industrial trade literature to verify and determine if the estimated emission reductions may be actual, achievable emission reductions or if the estimated emission reductions are associated with emissions units that are already controlled.

EPA focused its verification and refinement efforts on those upwind states with the largest estimated potential air quality impacts from potential non-EGU emission reductions. Specifically, EPA used an estimate of 0.02 ppb as a threshold for air quality improvement that may be obtained from reductions from non-EGU emissions sources in each state to better target its efforts to verify and refine the potential estimated non-EGU NO_X emission reductions. The Agency explained that it was not applying a 0.02 ppb impact threshold as a step in the step 3 multi-factor test. Rather, the threshold allowed the Agency to better target its efforts toward the potentially effective states for non-EGU NO_X emission reductions. Based on this, the states for which the Agency verified existing control information and refined the NO_X emission reduction estimates in the proposed rule included: Indiana, New York, Ohio, Pennsylvania, and West Virginia. For additional discussion on the air quality impacts by state, see the section titled *Air Quality Impacts from Potential Non-EGU Emissions Reductions* in the technical memorandum titled *Assessing Non-EGU Emission Reduction Potential* in the docket for this rule. In this final rule, EPA extended its verification process to additional linked states, including Maryland, Michigan, and Virginia.[149]

As noted above to focus the set of non-EGU emissions sources/units in the linked upwind states (Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, Virginia, and West Virginia) for which EPA could verify existing control information and refine the NO_X emission reduction estimates, the Agency assumed that the potential reductions in tranche one were likely cost-effective because tranche one's weighted average cost of $2,000 per ton is similar to the identified control stringency for EGUs represented by up to $1,800 per ton (see section VI.D.1).

In the proposed rule, EPA found in Indiana, New York, Ohio, and Pennsylvania, that the estimated emission reductions in tranche one that cost less than $2,000 per ton were 6,346 ozone season tons. Note that no potential emission reductions at a cost of less than $2,000 per ton were identified in West Virginia because CoST originally estimated control costs for two IC engines in West Virginia inappropriately, and CoST did not identify likely cost-effective controls for any other non-EGU emissions units in the state. EPA removed the two IC engines in West Virginia from further consideration because the corrected potential cost was greater than $2,000 per ton.

In reviewing the potential controls in tranche one that were estimated to cost less than $2,000 per ton for Indiana, New York, Pennsylvania, and Ohio, EPA found that these reductions were from SCR applied to glass furnaces and SNCR applied to cement kilns. In addition in this final rule, EPA found in Maryland, Michigan, and Virginia the estimated emission reductions in tranche one that cost less than $2,000 per ton are 664 ozone season tons. These estimated reductions were also from glass furnaces and cement kilns. The total estimated emission reductions in tranche one in Indiana, Maryland, Michigan, New York, Pennsylvania, Ohio, and Virginia that cost less than $2,000 per ton are 7,010 ozone season tons.

Next, to verify the information on the application of these controls and estimated emission reductions, EPA reviewed facilities' online title V permits and industrial trade literature for the likely cost-effective emission reductions associated with SCR applied to glass furnaces and SNCR applied to cement kilns. In the proposed rule, EPA determined that of the 20 emissions units in Indiana, New York, Pennsylvania, and Ohio included in the cost analysis, source permits identified that 10 units (i) already have controls and monitors (primarily CEMS), (ii) are installing controls and CEMS or consolidating operations in the next few years as a result of recent consent decrees issued as part of EPA's New Source Review Air Enforcement Initiative, (iii) have shut down, or (iv) are planning to shut down by 2023. These 10 units account for approximately 34 percent of estimated potential emissions reductions from Pennsylvania, New York, Ohio, and Indiana in tranche 1 that cost <$2,000 per ton. The results of the online permit review and review of industrial trade literature, summarized in Table VI.C.2–1 below, suggested that approximately 14 percent of the CoST-estimated potential emission reductions in these four states may be possible to achieve.

TABLE VI.C.2–1—STATUS OF POTENTIAL EMISSION REDUCTIONS

	Number of emissions units	OS tons	Percent of total
Shutdowns	4	824	13
Lehigh Cement—Kiln Replacements	3	366	6
NEI Discrepancy/Uncertain[150]	1	3,286	51

[149] The verification efforts did not include New Jersey, Illinois, and Kentucky. For New Jersey, the projected 2023 emissions inventory did not include non-EGU point sources/units with pre-control NO_X emissions greater than 150 tpy for which the Agency had applicable control measures; as such, there were no potential NO_X emission reductions to verify. For Illinois, EPA did not review the potential controls for emissions sources/units because their permits were not available online. (However, as discussed below, EPA assumed all of the potential emission reductions estimated by CoST from units in Illinois were considered available.) For Kentucky EPA did not review the potential controls because CoST did not identify applicable control measures for any emissions sources/units in the state; as such, there were no potential NO_X emission reductions to verify. Louisiana was not assessed because the receptor to which it is linked is projected to resolve by the 2023 ozone seaon, which is the earliest ozone season EPA finds non-EGU emission reductions may become available.

[150] In the memorandum titled *Assessing Non-EGU Emission Reduction Potential,* the section titled *Conclusions of Verification and Review of Controls on Non-EGU Sources in Four States and Potential Emissions Reductions* includes a discussion related to the underlying uncertainty in these estimates of emission reductions. Approximately 51 percent of the estimated emission reductions are associated with only one emissions unit at a facility in Pennsylvania. In the 2023 projected inventory, the pre-control emissions are significantly higher than what appears in the Pennsylvania Air Emissions Report for this facility and significantly higher than any other glass furnace in this analysis. The projected inventory does not show a control on any unit at this facility, even though a review of the permit indicates that one unit does have a control.

TABLE VI.C.2–1—STATUS OF POTENTIAL EMISSION REDUCTIONS—Continued

	Number of emissions units	OS tons	Percent of total
Already Controlled/Uncertain	5	967	15
Possible Emission Reductions	7	903	14
Total	20	6,346	

In EPA's analysis for this final rule, the online permit review for Maryland, Michigan, and Virginia identified approximately 62 ozone season tons out of the estimated 664 ozone season tons that are from sources/units already controlled, leaving an estimated 602 ozone season tons of likely cost-effective emission reductions from these states. For additional details on the review of online permits and industrial trade literature, please see the memorandum titled *Assessing Non-EGU Emission Reduction Potential,* available in the docket for this rule.

EPA previously examined the time necessary to install the controls indicated in the table above (with details on the technology tranches) for different industries. The 2016 CSAPR Update Non-EGU TSD provided preliminary estimates of installation times for a variety of NO_X control technologies applied to a large number of sources in non-EGU industry sectors.[151] For virtually all NO_X controls applied to cement manufacturing and glass manufacturing, information on installation times was not available to provide an estimate, and the installation time for these controls was ''uncertain.'' There was an exception for SNCR applied to cement kilns; however, the installation time estimate of 42–51 weeks listed in the CSAPR Update Non-EGU TSD does not account for implementation across multiple sources, the time needed to have NO_X monitoring installed, and other steps in the permitting and construction processes.

To improve upon information from the CSAPR Update Non-EGU TSD on installation times for SCR on glass furnaces and SNCR on cement kilns, EPA reviewed information from permitting actions and a consent decree. For two glass manufacturing facilities that installed SCR on glass furnaces, from the time of permit application to the time of SCR operation was approximately 19 months for one facility and is currently at least 20 months for another facility.[152] These installation times do not reflect time needed for pre-construction design and engineering, financing, and factors associated with scaling up construction services for multiple installations at several emissions units. With respect to cement kilns, an April 2013 consent decree between EPA and CEMEX, Inc. required installation of SNCR at a kiln within 450 days, or approximately 15 months, of the effective date of the consent decree. Similarly, this installation time does not reflect time associated with scaling up construction services for multiple control installations at several emissions units.

This information and EPA's general experience indicate that a two-year installation timeframe for a rule requiring installation of new control technologies across a variety of emissions sources in several industry sectors on a regional basis is a relatively fast installation timeframe. A shorter installation timeframe of approximately one year (*i.e.,* in time for the 2022 ozone season) would raise significant challenges for sources, suppliers, contractors, and other economic actors, potentially including customers relying on the products or services supplied by the regulated sources.[153]

Thus, for this rule, EPA estimates that these controls for glass furnaces and cement kilns would take at least 2 years to install on a sector-wide basis across the 12-state region. Therefore, based on the information currently available, EPA in its reasoned judgment finds that the 2023 ozone season is the earliest ozone season by which these non-EGU controls could be installed.

D. Assessing Cost, EGU and Non-EGU NO_X Reductions, and Air Quality

To determine the emissions that are significantly contributing to nonattainment or interfering with maintenance, EPA applied the multi-factor test to EGUs and non-EGUs separately, considering for each the relationship of cost, available emission reductions, and downwind air quality impacts. Specifically, EPA determined the appropriate level of uniform NO_X control stringency that addresses the impacts of interstate transport on downwind nonattainment or maintenance receptors. EPA also evaluated possible over-control by determining if an upwind state is linked solely to downwind air quality problems that could have been resolved at a lower cost threshold, or if an upwind state could have reduced its emissions below the 1 percent air quality contribution threshold at a lower cost threshold.

1. EGU Assessment

For EGUs, EPA examined the emission reduction potential associated with each EGU emission control technology (presented in section VI.C.1) and its impact on the air quality at downwind receptors. Specifically, EPA identified the projected air quality improvement relative to the base case, as well as whether the air quality improvements are sufficient to shift the status of receptors from nonattainment to maintenance or from maintenance to clean. Combining these air quality factors, cost, and emission reductions, EPA identified a control stringency for EGUs that maximizes the air quality improvement from emission controls available in the timeframe for which air quality problems at downwind receptors

[151] The CSAPR Update Non-EGU TSD is available on EPA's website at the following link: *https://www.epa.gov/airmarkets/assessment-non-egu-NOX-emission-controls-cost-controls-and-time-compliance-final-tsd.*

[152] Cardinal FG Company submitted a permit application to the Wisconsin Department of Natural Resources (WIDNR) to construct an SCR in December 2017 at a facility in Portage, Wisconsin. The SCR was expected to be ready for testing in mid-July 2019. In addition, Cardinal FG Company submitted a permit application to the WIDNR to construct an SCR in January 2019 at a facility in Menomonie, Wisconsin. The SCR is currently not operational.

[153] EPA notes that in several places, the CAA itself indicates a general congressional expectation that the retrofit of emissions controls onto existing sources across diverse industry sectors and at a regional or national scale may take at least several years. For instance, under CAA section 112(i)(3), Congress allowed for up to three years for compliance with control requirements in national rules for hazardous air pollutants for existing sources. And under CAA section 169A(g)(4), Congress established up to five years for the installation of best available retrofit technology (BART) for over two-dozen source categories. While these provisions also call for installation ''as expeditiously as practicable,'' EPA notes that both of these timeframes are longer than the two-year estimate EPA uses in this rulemaking.

persist. This control stringency reflects the optimization of existing SCR controls and installation of state-of-the-art NO_X combustion controls, which are widely available at a representative marginal cost of $1,600 per ton. It also includes the optimization of existing SNCR controls at sources that are already partially operating these controls, which becomes widely available as a mitigation technology at $1,800 per ton. EPA's evaluation also shows that emission budgets reflecting the operation of these existing post combustion controls and combustion control upgrades do not over-control upwind states' emissions relative to either the downwind air quality problems to which they are linked at step 1 or the 1 percent contribution threshold that triggers further evaluation at step 2 of the 4-step framework for the 2008 ozone NAAQS. To assess downwind air quality impacts for each nonattainment and maintenance receptor identified in section V.C, EPA evaluated the air quality change at that receptor expected from the progressively more stringent upwind EGU control stringencies that were available for that time period. This assessment provides the downwind ozone improvements for consideration and provides air quality data that is used to evaluate potential over-control.

To assess the air quality impacts of the various control stringencies at downwind receptors, EPA evaluated changes resulting from the emission reductions associated with the identified emission controls in each of the upwind states, as well as corresponding reductions of similar stringency in the downwind state containing the receptor they are linked to. By applying these emission controls to the state containing the receptor, EPA assumes that the downwind state will implement (if it has not already) an emissions control stringency for its sources that is comparable to the upwind control stringency identified here. Consequently, EPA explicitly ensures that it is accounting for the downwind state's share of a nonattainment or maintenance problem (which is a part of the overcontrol evaluation).[154]

For states that were not linked to that receptor, the air quality change at that receptor was evaluated assuming emissions equal to the engineering analytics base case emission level. This method holds each upwind state responsible for its share of the specific downwind problems to which it is linked. For states that are not linked to that receptor (even if they are linked to a different receptor), EPA assumes that they are not making emission reductions beyond those in the base case to that receptor. In practice, because these states, by definition, do not impact such receptors above the contribution threshold, the changes in emissions have little to no effect on the non-linked receptor. Furthermore, if EPA were to explicitly consider these reductions within the framework, it would introduce interdependency into the solution for significant contribution. The state-and-receptor-specific definition of significant contribution would devolve into a simultaneous regional action, where particular states would have to either ''go first'' or where non-linked states would shoulder burdens to receptors to which they are not linked while other linked states would do less. In any case, EPA has verified that even if it were to account for non-linked state reductions under the selected control stringency, the changes in concentrations at the receptors are so small that they do not affect the attainment or maintenance status of any receptor.

For this assessment, EPA used an ozone air quality assessment tool (ozone AQAT) to estimate downwind changes in ozone concentrations related to upwind changes in emission levels. EPA used this tool to analyze the years for which downwind nonattainment and maintenance problems persist for the 2008 ozone NAAQS. Under the base case, EPA projects that such air quality problems persist through 2025. Therefore, EPA focused its assessment on the years 2021 through 2025.

This tool is similar to the AQAT tool used in the CSAPR Update to evaluate changes in ozone concentrations. The ozone AQAT uses simplifying assumptions regarding the relationship between each state's change in NO_X emissions and the corresponding change in ozone concentrations at nonattainment and maintenance receptors to which that state is linked. This method is calibrated using two CAMx air quality modeling scenarios that fully account for the non-linear relationship between emissions and air quality associated with atmospheric chemistry. The two CAMx modeling scenarios are the 2016fh1 base year and the 2023fh1 future year scenarios for the 2021 time period. For the 2024 and 2025 AQAT simulations, the two CAMx modeling scenarios are the 2023fh1 future year and the 2028fh1 scenario. See the Ozone Transport Policy Analysis Final Rule TSD for additional details.

For each EGU emission control technology, EPA first evaluated the magnitude of the change in ozone concentrations at the nonattainment and maintenance receptors for each relevant year. EPA next evaluated whether the estimated change in concentration would resolve the receptor's nonattainment or maintenance concern by lowering the average or maximum design values below 76 ppb, respectively. For a complete set of estimates, see the Ozone Transport Policy Analysis Final Rule TSD or the ozone AQAT excel file.

In 2021, there are two nonattainment receptors and two maintenance receptors (see section V.C for details). Table VI.D.1–1 summarizes the results of EPA's evaluation of air quality improvements in 2021 at these receptors using AQAT. EPA evaluated the air quality improvements at the four receptors for the three EGU emission control technologies that are available in the near-term. EPA determined that the average air quality improvement at the four receptors relative to the engineering analytics base case was 0.16 ppb for optimization of existing SCRs and LNB upgrades, and 0.17 ppb when also including optimization of existing SNCRs. EPA determined that the Westport receptor (090019003) remains nonattainment and the Houston receptor (482010024) remains maintenance across these control stringencies, while the Stratford receptor (090013007) switches from nonattainment to maintenance with the optimization of existing SCRs and LNB upgrades (*i.e.,* its average DV becomes clean but its maximum DV remains above the NAAQS). Lastly, the New Haven receptor has all nonattainment and maintenance resolved in the engineering analytics base case. For more information about how this assessment was performed and the results of the analysis for each receptor, refer to the Ozone Transport Policy Analysis Final Rule TSD and to the Ozone AQAT included in the docket for this rule.

[154] This step is irrelevant in the analysis for the Connecticut receptors because that state shows no EGU reduction potential from the EGU control optimization or retrofit technologies identified given its already low-emitting fleet.

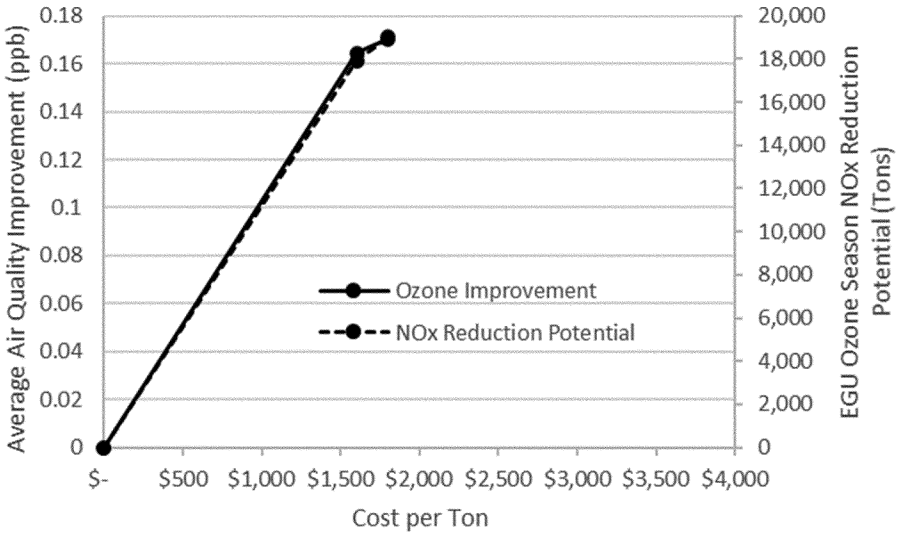
TABLE VI.D.1–1—AIR QUALITY IMPROVEMENTS AT THE FOUR RECEPTORS IN 2021 FROM NEAR-TERM EMISSION CONTROL TECHNOLOGIES

Monitor ID #	State	County	Baseline	SCR optimization + LNB upgrade	SCR/SNCR optimization + LNB upgrade	Baseline	SCR optimization + LNB upgrade	SCR/SNCR optimization + LNB upgrade
			Average DV (ppb)	Average DV (ppb)	Average DV (ppb)	Max DV (ppb)	Max DV (ppb)	Max DV (ppb)
90013007 ..	Connecticut	Fairfield	76.13	75.93	75.93	77.05	76.85	76.85
90019003 ..	Connecticut	Fairfield	78.27	78.12	78.12	78.58	78.43	78.42
90099002 ..	Connecticut	New Haven	73.59	73.38	73.37	75.74	75.53	75.52
482010024	Texas	Harris	75.62	75.51	75.50	77.25	77.15	77.13
Average AQ Improvement Relative to Base (ppb).			0.00	0.16	0.17			

Figure 1 illustrates the air quality improvement relative to the estimated representative cost associated with the previously identified near-term emission control technologies. This graph shows improving air quality at the downwind receptors as emission control technologies are assumed to be implemented. In this final rule, EPA has adjusted this graph to reflect a revised estimated representative cost of $1,800 per ton for optimization of already operating SNCRs (which, as explained in section VI.B.1, EPA has adjusted from a value of $3,900 per ton in the proposed rule, which reflected turning on idled SNCRs). In the proposed rule, the SNCR cost extended the right terminus of the solid line out to $3,900 per ton and showed a ''knee-in-the-curve'' pattern. As noted by commenters, a ''knee-in-the-curve'' is not on its own a justification for not requiring reductions beyond that point in the cost curve. Even though EPA did not solely rely on this factor in the proposed rule, it notes that this inflection point is greatly diminished and there a less discernable knee when the SNCR optimization cost is updated to reflect $1,800 per ton. In fact, as explained below, EPA does not view the now very slight difference in cost thresholds between $1,600 per ton and $1,800 per ton as significant, and together, EPA views them as comparable in terms of the relationship of available emission reductions to air quality improvement.

The graph in Figure 1 to Section VI.D.1 highlights that the majority of emission reduction potential and air quality improvement occurs from optimization of existing SCRs, with some additional reductions from installation of state-of-the-art combustion control at the same cost threshold. At the slightly higher cost threshold of $1,800 per ton, there is some additional air quality improvement from optimization of existing SNCRs. Taken together, this level of control stringency in emission budgets represents the level at which incremental EGU NO_X reduction potential and corresponding downwind ozone air quality improvements are maximized with respect to identified near-term emission control technologies. While the more stringent emission budget levels (*e.g.,* emission budgets reflecting the inclusion of optimization of existing SNCRs) yield a relatively small amount of incremental emission reductions and fewer air quality improvements, they still demonstrate meaningful air quality improvement. Further, after consideration of comments and examining cost data, EPA has identified additional compelling reasons favoring the inclusion of optimization of SNCR controls in the context of this full remedy rulemaking, discussed below. This evaluation shows that EGU NO_X reductions for each of the near-term emission control technologies are available at reasonable cost and that these reductions can provide improvements in downwind ozone concentrations at the identified nonattainment and maintenance receptors.

Figure 1 to Section VI.D.1 - EGU Ozone Season NO_X Reduction Potential in 12 Linked States and Corresponding Total Reductions in Downwind Ozone Concentration at Nonattainment and Maintenance Receptors for Each Cost Threshold Level Evaluated (2021/2022)*



***Note –** Starting with the $1,600 per ton cost threshold in this figure, full implementation of assumed SCR optimization and state-of-the-art combustion control upgrades are reflected.

EPA finds that the control stringency that reflects optimization of existing SCRs and SNCRs, and installation of state-of-the-art combustion controls results in a substantial number of emission reductions totaling nearly 19,000 tons (approximately 16 percent of the baseline level), resulting in all downwind air quality problems for the 2008 ozone NAAQS being resolved after 2024 (one year earlier than the base case).[155] There are also projected changes in receptor status (from projected nonattainment to maintenance-only) for the Stratford and Westport receptors (the first in 2021, the second in 2024). In addition, the Houston receptor changes from maintenance to attainment in 2023. In 2021, the average level of improvement in ozone concentrations at all four of the receptors is 0.17 ppb.

Including optimization of existing SNCRs yields incremental emission reductions of approximately 1,200 tons as there are fewer sources with this emission control technology. As noted in the proposed rule, a small portion of the coal fleet had this technology in place (14 percent), and of that small portion, many units with these SNCR controls had emission rates of 0.13 lb/mmBtu or less (many operating less than 0.1 lb/mmBtu), suggesting they were already optimizing their SNCRs. Analysis using the AQAT tool suggests that optimization of existing SNCRs has an average air quality improvement of 0.01 ppb. While having no further impact on receptors' classification status, it does deliver additional improvement at the problematic receptors.

Given the small portion of the EGU fleet with existing SNCRs in the 12 linked states, the limited number of additional reductions, and the relatively higher cost for this emission control technology, EPA had proposed to determine that the potential emission reductions associated with optimizing existing SNCRs not be required to eliminate significant contribution from the 12 linked states under the 2008 ozone NAAQS. Based on comments EPA received and outlined below, along with subsequent review of cost data and additional considerations, EPA is including emission reduction potential from this emission control technology in the state emission budgets for this final rule.

Comment: Commenters suggested that reductions from optimizing existing SNCRs should be included in the final rule consistent with Clean Air Act requirements and the full remedy nature of this action. These commenters noted that EPA's touchstone metric in the step 3 multi-factor analysis of ''maximizing'' air quality improvement relative to representative marginal cost was not a sufficient reason to exclude these reductions. They suggest it is eminently ''reasonable'' to require EGUs to operate all existing controls, for which they have already made significant capital expenditures to purchase and install. These commenters argued that the reductions, even if small, still delivered air quality improvement in a meaningful timeframe at downwind receptors linked to upwind contribution. The same commenters also noted that these emission control technologies may cost less than EPA suggested in the proposed rule because most of the SNCRs are already operating to some degree at a much lower allowance price incentive.

[155] EPA is not obligated to fully resolve downwind nonattainment and maintenance issues through the good neighbor provision, as some commenters assert. EPA considers the changes in receptor status in this analysis informative in the context of the step 3 multi-factor test. However, that does not mean EPA agrees that good neighbor obligations may only be considered fully addressed when all downwind receptors have reached attainment.

Response: EPA is including SNCR optimization in its EGU control stringency in this final rule. EPA examined both its methodology and its cost assumptions and determined it was appropriate to include SNCR optimization-driven reductions in identifying significant contribution. EPA concludes that most of these units are already operating and, in most cases, would not incur the additional FOM cost associated with $3,900 per ton estimate included in the proposed rule, and reductions were likely significantly less expensive, consistent with the commenters' observation that a broad set of units appeared to be incentivized to operate these controls under the CSAPR NO_X Ozone Season Group 2 Trading Program (which applied control stringency levels with a representative cost of $1,400 per ton). This technology inclusion was further supported by the observation that most SNCR-controlled units already appear to be operating at lower rates compared with their higher historical emission rates (indicating partial operation) even with the current allowance price substantially under $1,800 per ton.

There are additional considerations unique to EGUs with existing SNCRs that EPA has determined support including their optimization as part of EPA's identified control stringency, such as:

- These controls are already installed and available for operation on these units;
- they are on average already partially operating, but not necessarily optimized;
- the reductions are available in the near-term (during ozone seasons when the problematic receptors are projected to persist), including by the 2021 Serious area attainment date;
- these sources are already covered under the existing CSAPR NO_X Ozone Season Group 2 Trading Program and thus have the monitoring, reporting, recordkeeping, and all other necessary elements of compliance with the trading program already in place;
- the overall compliance burden and total cost is relatively low, and the incremental cost of operating the technology is not capital intensive.

Indeed, when comparing units of similar size and operation, the absolute annual cost of operating SNCR controls in total dollar terms is often comparable to or less than the cost of operating SCR controls. However, the significantly lower NO_X removal efficiency for existing SNCRs (20 to 25 percent) compared to existing SCRs (60 to 90 percent) results in a higher cost-per-ton estimate.

Another consideration that weighs heavily in favor of including the optimization of existing SNCRs as part of EPA's identified control stringency is that emission budgets are set using historical data as a starting point, thus capturing the emission reductions achieved by the EGUs already optimizing their SNCR controls. In other words, state emission budgets assume these units are to continue optimizing those controls. At the same time, EPA's proposed approach would have implicitly allowed EGUs not fully operating their SNCRs to continue to not do so, avoiding the associated cost, and reaping a competitive advantage over those EGUs who, in fully operating their controls, are acting in a more environmentally responsible manner. EPA views this treatment of higher emitting units to be problematic, when the number of EGUs already optimizing their SNCR controls underscores the cost-effectiveness and feasibility of this control measure. Further, as proposed, EPA is including optimization of existing SCRs in its identified control stringency. SCRs are more capital-intensive investments with much better environmental performance. If EPA failed to include optimization of existing SNCRs in its identified control stringency in this action, EGUs that chose SNCRs, which is a less effective form of emission control, would be allowed to continue not operating that control. Considerations of effective and equitable environmental policy strongly weigh against allowing such a result and the perverse incentives it would tend to foster.

These factors, coupled with EPA's final rule cost evaluation, leads the Agency to include optimization of existing SNCRs as part of its identified control stringency. As such, EPA is determining that the full operation of all existing post-combustion controls (both SCRs and SNCRs) and state-of-the-art combustion control upgrades from units constitute the Agency's identified control stringency for EGUs and the associated emision reductions are reflected in the new emission budgets in this final rule. This determination for EGUs is the result of the assessment of the multiple factors and considerations listed above rather than any single factor.

Finally, EPA is determining to not incorporate any additional generation shifting associated with optimization of existing SNCRs, as its updated costs are commensurate with levels of generation shifting already associated with the optimization of existing SCRs reflected in the new state emission budgets. In the proposed rule, EPA identified 1,700 tons of emission reductions from generation shifting associated with optimization of existing SNCRs at a representative cost of $3,900 per ton. Because EPA is determining that $3,900 per ton is not the cost associated with optimizing these partially operating SNCR controls, the Agency is not including that 1,700 tons of generation shifting reduction potential in the state emission budgets in this final rule. Therefore, the emission reductions associated with optimization of existing SNCRs are approximately 1,200 tons for the 12-state region.

Comment: Some commenters suggest that EPA examine higher cost thresholds consistent with downwind state RACT requirements.

Response: EPA first notes that it is including all identified EGU emission controls that are possible to implement during the period during which the upwind state remains linked to a downwind nonattainment or maintenance receptor. While EPA believes the stringency of downwind emission requirements can be useful information in evaluating which control stringencies should be considered upwind, it is—on its own—not dispositive of what that upwind stringency should be. As demonstrated through EPA's air quality modeling, the air quality impact (generally expressed in ppb of ambient ozone concentration at a downwind receptor) of a ton of emissions reduced varies by geography, with areas where the receptor is located generally having a much higher ppb per ton of emissions impact. Therefore, the home state where a receptor is located may generate much greater environmental and public health benefit from a ton of emissions reduced in that state than in an upwind state. In many cases, that may merit a different level of stringency for the home state. However, EPA does view the EGU control stringency it is implementing in this final rule as largely consistent with those EGU emission controls covered by RACT requirements in downwind states (*e.g.,* optimize existing controls and upgrade to state-of-the-art combustion controls). While installation of new post-combustion controls (SCR or SNCR) may also qualify for RACT, EPA's analysis is that such controls could not be operational on a fleetwide scale before all downwind receptors are projected to resolve. Controls associated with the selected EGU control stringency are implementable by the 2021 ozone season (or in the case of upgraded or new combustion controls, by the 2022 ozone season; see the discussion in section VI.C and in the EGU NO_X Mitigation Strategies Final

Rule TSD for details). Thus, as to the 2021 and 2022 ozone seasons these are the only emision controls for EGUs that EPA is assessing for this timeframe because they are the only ones that are possible. *See Wisconsin,* 938 F.3d at 320.

As discussed above in section VI.C, EPA estimates that the time necessary to install new SNCR or new SCR controls (represented by $5,800 per ton and $9,600 per ton cost) on a regional basis across multiple EGUs is approximately 39 to 48 months. While a single new SNCR may be installed within 16 months, for the reasons explained in section VI.C.1, a time frame that encompasses the ability for a unit to make a unit-specific choice of what post-combustion control (SCR or SNCR) is best for its configuration and future operating plans is appropriate. Therefore, EPA considers the timing estimates for SNCR and SCR together, and the 39–48 month time frame for SCR installation (with its superior NOx control efficiency) is the most appropriate time period to use for assessing post-combustion controls. Assuming a final rule in the spring of 2021, this means that these controls could not be operational by the 2024 ozone season, and therefore the reduction potential is not available until the 2025 ozone season. According to EPA's air quality assessment, there are no remaining air quality receptors in 2025 assuming the control stringency identified in this final rule for EGUs is already in place in the 12 linked states. It is not necessary to require emission controls that can only be operational at a point in time when EPA's projections demonstrate there is no remaining interstate transport problem for the 2008 Ozone NAAQS.

EPA requested comment on its proposed determination that new post-combustion controls (SCR or SNCR) are not possible to implement on a regional basis by the start of the 2024 ozone season), and if evidence established such controls were possible, how EPA might apply its step 3 multi-factor analysis in that circumstances. EPA received comments on this topic and addresses the timing assumptions in Section VI.C.1. Moreover, the Appendix to the Ozone Transport Policy Analysis Final Rule TSD further discusses how, even if the controls were available on an earlier time scale, the multi-factor assessment would not necessarily indicate their inclusion in this rule.

2. Non-EGU Assessment

The Agency used CoST and the 2023 projected emissions inventory to identify uncontrolled emissions sources or units and applied controls to emissions units with 150 tpy or more of pre-control NO_X emissions, which is an emissions threshold that represents a comparable unit size to 25 MW for EGUs. EPA categorized the CoST results by the control technologies, calculated a weighted average cost per ton (in 2016$) for emission reductions associated with each technology, and identified two tranches of potential reductions based on estimated cost effectiveness (for details see section VI.B.2). EPA took a series of steps to further verify and refine the NO_X emission reduction potential estimated by CoST, the CMDb, and the 2023 projected inventory and found that the cost-effective emission reductions in tranche one were from SCR applied to glass furnaces and SNCR applied to cement kilns. These controls could likely take 2–4 years to install. Therefore, at the time of this final rule, EPA is concluding that the 2023 ozone season is the earliest ozone season by which these non-EGU controls could be installed (for details see section VI.C.2).

Using 2023 as the potential earliest date by which controls for glass furnaces and cement kilns can be installed, EPA assessed whether these emission controls should be required at step 3 under its multi-factor test.[156] EPA estimated that across the 11 states linked to the remaining receptor in Connecticut in 2023 (Westport), the available emission reductions from tranche one at less than $2,000 per ton are 1,505 ozone season tons.[157]

Using AQAT, EPA assessed whether this level of emission reductions would have a meaningful effect on the Connecticut receptor. EPA determined that the improvement in air quality at this receptor from these emission reductions is 0.03 ppb. This potential air quality improvement is about an order of magnitude less than the air quality improvement EPA expects to obtain from the emission controls identified in its selected control stringency for EGUs in 2023, which, at a representative cost of $1,800 per ton,[158] is estimated to improve air quality at the remaining Connecticut receptor by 0.28 ppb. These air quality improvements and representative costs support the Agency's position, consistent with its proposed rule, that requiring these non-EGU controls is not warranted under EPA's step 3 multi-factor analysis.

Based on this assessment, the Agency determines under the multi-factor test that even the likely most cost-effective reductions from non-EGU sources (*i.e.,* those below $2,000 per ton in tranche one) do not rise to the level of ''significance'' that would justify mandating them under the good neighbor provision for the 2008 ozone NAAQS.[159] In the proposed rule, EPA encouraged stakeholder comments on the analysis with respect to the tranche one non-EGU control strategies.

Comment: One commenter suggested that EPA should consider SCR as a control technology for cement plants. The commenter stated that SCR has been used at cement kilns across the globe and that a cement plant in Joppa, Illinois has successfully demonstrated its use with a reported 80 percent removal rate for NO_X, while a plant in Midlothian, Texas, has obtained a permit to install SCR units on its kilns.

Response: The Agency appreciates the information from the commenter about SCR controls on cement kilns. However, what the comment does not consider is the time it has taken to install controls at the two plants cited. The SCR installation at the Joppa, IL plant took approximately 6 years to install. The SCR at the Midlothian, TX cement plant is currently not operating, to the best of EPA's knowledge. Cost and testing

[156] Louisiana is excluded from this analysis because the Houston, Texas receptor to which it is linked is projected to be neither a nonattainment nor a maintenance receptor by the 2023 ozone season based on the CAMx modeling with IPM emissions. In addition, New Jersey is not included because there were no potential NO_X emission reductions from New Jersey because the projected 2023 emissions inventory did not include non-EGU point sources/units in New Jersey with pre-control NO_X emissions greater than 150 tpy for which the Agency had applicable control measures.

[157] The 1,505 ozone season tons is a total of 903 tons from Table VI.C.2.1 and 602 ozone season tons from the remaining 5 states (Michigan, Illinois, Kentucky, Virginia, and Maryland). Details on the 903 ozone season tons are discussed in Section VI.C.2 above. As noted earlier in this section, for Kentucky EPA did not review the potential controls because CoST did not identify applicable control measures for any emissions sources/units in the state. In addition, EPA did not conduct an online permit review for Illinois non-EGU sources/units because their permits were not available online. The 602 ozone season tons reflect the review of emissions units in Michigan, Virginia, and Maryland, as well as all of the tons CoST estimated for Illinois but that were not verified or reviewed.

[158] EPA notes that the cost per ton value used in the non-EGU assessment was a weighted average cost per ton, whereas the cost/ton value used in the EGU SCR optimization assessment was a 90th percentile cost. In other words, the threshold EPA used for evaluating non-EGU emissions sources/units represents a relatively higher, or more stringent, cost/ton threshold value for considering potential controls compared to EGUs than the dollar value alone suggests.

[159] EPA's analysis in this final rule allows the Agency to reach the conclusion that emission reductions are not required from these emissions sources in order to resolve good neighbor obligations for the 2008 ozone NAAQS. EPA's assessment of emission reduction potential from non-EGU sources for this rulemaking is not intended to imply that a similar conclusion would be reached in the context of a different NAAQS.

concerns have led to slow acceptance of SCR at cement kilns in the United States. The examples provided suggest the time to install these SCRs is much longer than downwind air quality problems are projected to persist for the 2008 ozone NAAQS.

EPA estimates that the 2023 ozone season is the earliest ozone season by which the 111 identified non-EGU emissions units in tranche two could be retrofitted or have controls installed. In tranche two, the weighted average cost of the estimated emission reductions from non-EGU emissions sources ranges from $5,000 to $6,600 per ton. Across the 11 states linked to the remaining receptor in Connecticut in 2023 (Westport), the Agency identified approximately 11,100 tons of potential ozone season emission reductions by applying layered combustion, NSCR (non-selective catalytic reduction) or layered combustion, and ultra-low NO_X burners in combination with SCR to 111 emissions units in the oil and gas industry and several manufacturing industries. Since the proposed rule, EPA verified existing control information and refined the NO_X emission reduction estimates for emissions sources/units in tranche two. Of the approximately 11,100 tons of potential ozone season emission reductions, EPA determined that approximately 10 percent of those estimated reductions are from sources/units already controlled. In the proposed rule EPA sought comment on the feasibility of further controlling NO_X from IC engines and large ICI boilers, including optimizing combustion and installing ultra-low NO_X burners.

EPA's assessment is that, with implementation of the new emission budgets for EGUs reflecting the Agency's selected control stringency (see section VI.D.1.), there will no longer be any downwind receptors in 2025 with respect to the 2008 ozone NAAQS. Focusing then on whether there are any non-EGU NO_X emission reductions available to address significant contribution under the step 3 multi-factor test in either the 2023 or 2024 ozone seasons, based on its assessment EPA is concluding that any such potentially available reductions would not be justified. EPA's assessment determined that there is a relatively smaller quantity of NO_X reductions that may be available from the non-EGU control strategies in tranches one and two in these years, across the 11 states linked to the remaining receptor. These control strategies are estimated to have a limited impact on further improving air quality at this receptor for this rulemaking. As shown in the Ozone Policy Analysis Final Rule TSD, the incremental effects of emission reductions from non-EGUs do not affect the status of any of the four receptors in any of the relevant years compared with EPA's EGU control stringency. For more information, refer to the Ozone Transport Policy Analysis Final Rule TSD. EPA therefore is concluding that no emission reductions from non-EGU sources are necessary to eliminate significant contribution under the good neighbor provision for the 2008 ozone NAAQS.

EPA solicited comment on its analysis, and whether, based on updated or more complete information, there may be grounds to find non-EGU emission reductions are necessary to address significant contribution for the 2008 ozone NAAQS.

Comment: EPA received several comments in response to this request. Some commenters tended to agree that with more complete information, further analysis would not find it necessary to further control emissions from non-EGU sources in this rule. A group of industry trade associations stated that without highly cost-effective options to reduce emissions from non-EGU emissions sources/units, the estimated reductions did not rise to the level of significance to mandate controls. Another commenter stated that the most appropriate mechanisms to consider whether further limits on NO_X emissions from industry boilers, furnaces and other emission sources are cost-effective are the existing NSR/PSD, NSPS, and RACT programs. This commenter stated that there is no need to apply additional programs on top of existing programs, or to circumvent existing programs, that are designed to address the issue of cost-effective emissions controls.

Another commenter stated that EPA should direct states to submit revisions to their SIPs because the SIP planning process is the best platform for the identification of potential NO_X emission reductions at the local level that may be necessary in non-EGU industry sectors. State and local air pollution control agencies have access to the detailed emissions inventory data from sources and emissions units in non-EGU industry sectors. With this data, states can assess whether additional emission reductions are necessary at the local level from non-EGU industry sectors.

Lastly, other commenters disagreed and stated that EPA lacks statutory authority to exclude non-EGU emissions sources from the coverage of the good neighbor provision, which extends to ''any source or other type of emissions activity'' that significantly contributes to downwind nonattainment or interferes with downwind maintenance.

Response: EPA stated in the proposed rule that it understands the methodology employed in its assessment was one approach to assessing emission reduction potential from non-EGU emissions sources or units and to determining an appropriate control stringency level for non-EGU sources. EPA also provided details on determining the 150 tpy emissions threshold in the section titled *Background for Determining Source Size/Threshold for Non-EGU Emissions Sources* in the memorandum titled *Assessing Non-EGU Emission Reduction Potential.* Based on EPA's analysis for this final rule and considering comments received, EPA determined that its analysis presents a credible analytical foundation on which to conclude that new emission controls on non-EGU sources are not required from the linked upwind states in order to address significant contribution or interference with maintenance of the 2008 ozone NAAQS.

Comment: The Agency received a number of comments on its step 3 analysis to determine whether any emission reductions should be required from non-EGU sources/units to address significant contribution under the 2008 ozone NAAQS. These comments covered a variety of issues related to the assessment of emission reduction potential from non-EGU sources/units. Environmental organizations and downwind states submitted comments that focused on the Agency's determination that further emission reductions would not need to be required from non-EGU sources/units. These comments emphasized that the assessment of non-EGU emission reductions was improperly limited to (a) Controls that would cost $2,000 per ton of emission reductions and (b) a narrow set of potential source types or emissions units. There were also several comments on EPA's decision to analyze emissions units of 150 tpy and larger for the non-EGU analysis. Commenters stated that previous transport rule makings analyzed emission units of 100 tpy and greater.

There were also several comments on the legal requirements to evaluate and include emission reductions from non-EGU emissions sources/units in the rule. The comments emphasized both the impossibility threshold from recent court decisions and data availability. One commenter said that a refusal to include non-EGU emission reductions in the rule would represent an abdication of statutory responsibility. Several comments expressed frustration

that the Agency has claimed data uncertainty issues in interstate transport rulemakings for years and that should no longer be a viable reason to exclude non-EGU emissions sources/units. The commenters stated that this is backed up by the decision in *Wisconsin.*

Finally, a number of stakeholders from industry associations and upwind states submitted comments stating they agreed with the proposed decision not to include emission reductions from non-EGU emissions sources/units in this rule. The commenters recognized the data limitations faced by the Agency, saying that additional emission reductions from this sector are not necessary to meet obligations under the good neighbor provisions. All of these groups provided limited additional information beyond what the Agency possessed and came to the same conclusions with regard to emission reductions from non-EGU sources/units. A point made in several comments was that emission reductions would not be able to be achieved before the 2023 ozone season due to the timing it would take to install and make operational the emission control devices.

Response: EPA disagrees that the assessment of non-EGU emission reduction potential was unnecessarily limited by carving out large numbers of potential sources, controls, and locations. Using the best information currently available to the Agency, EPA extended its emission reduction and air quality analyses beyond EGUs to include many major stationary source sectors in the linked upwind states, including non-EGU emissions sources in various industry sectors (see Table 2 in the September 1, 2020 document titled *Assessing Non-EGU Emission Reduction Potential* for a summary). In the analyses, we determined that emissions reductions from non-EGU sources will have a relatively small effect on any downwind receptor in the year by which such controls could likely be installed and do not rise to the level of ''significance'' that would justify mandating them under the good neighbor provision for the 2008 ozone NAAQS. Further, in the September 1, 2020 memorandum, EPA included a discussion of the assessment for determining an appropriate emissions size threshold comparable to those EGUs included in this and previous transport rulemakings.

In addition, EPA disagrees that the use of a $1,600/ton EGU threshold as a roughly equivalent threshold to assess non-EGU controls is inappropriate. We note that the $2,000/ton threshold value used for assessing non-EGU controls provides a rough equivalence with the threshold value and analysis for EGUs. The $2,000/ton threshold value is a weighted average of control costs, while EPA's cost threshold for EGUs is based on a 90th percentile metric. A 90th percentile metric provides a higher cost threshold for assessing potential controls than a weighted average cost. In other words, the $2,000/ton threshold EPA used for evaluating non-EGU emissions sources/units represents a relatively lower cost/ton threshold value for considering potential controls.

EPA also believes that its determination with respect to emissions reductions from non-EGU sources in this action is not premised on ''uncertainty,'' or lack of information, but rather a finding based on the analysis of tranche 1 and tranche 2 controls that those non-EGU emission controls that could be potentially available at a cost-effectiveness comparable to EGU controls do not produce sufficient total emission reductions or downwind air quality impacts to be justified under EPA's step 3 multi-factor analysis. The emissions control strategy EPA assessed for non-EGU emissions sources across all twelve states did not generate sufficient air quality improvements to justify requiring.

Additional responses to these comments are provided in the RTC Document included in the docket.

EPA also requested comment on a number of questions related to specific control technologies on non-EGU emissions sources the Agency evaluated, and in particular sought feedback and data from stakeholders with relevant expertise or knowledge. Recognizing the limitations and uncertainties in the existing data EPA used in the assessment of non-EGU emission reductions in the proposed rule, EPA requested comment to assist in substantiating whether the assessment is fully supportable based on additional information and analyses not currently available to the Agency.

Comment: One industry association (National Lime Association) prepared a cost estimate using publicly available information from the EPA Control Cost Manual Worksheet and generic public emission factors from EPA Standard AP–42. The industry-specific report demonstrated: (a) The industry could not possibly achieve any meaningful reductions in NOx emissions by the 2021 ozone season to eliminate ''significant'' contribution under the 2008 ozone NAAQS; and (b) even considering the most favorable application of retrofit SNCR control in the industry, installation of such controls could not be considered ''cost-effective'' in the context of this rule. Another trade association stated that obtaining information on NOx emissions units, much less sector-specific information on NOx emission units for purposes of the multi-factor test, would be exceedingly challenging based on available state and local air authority emission inventories and potentially proprietary technology and site-specific cost information.

Another commenter provided unit-specific information prepared for four-factor analyses for recent Regional Haze SIPs for several units in the iron and steel industry. Lastly, another commenter stated that developing a more complete non-EGU inventory is an essential task for EPA. EPA should continue to develop its non-EGU inventory for two purposes: (i) If the New York metropolitan area does not attain the 2008 ozone NAAQS in 2024, as EPA projects, additional emission reductions throughout the region may be necessary, and (ii) EPA is statutorily mandated to act on states' Good Neighbor SIPs for the more stringent 2015 ozone NAAQS now or in the coming months. The commenter concluded that EPA may ultimately need to issue FIPs in instances of SIP disapprovals and emission reductions beyond the EGU sector will likely be required for the New York metropolitan area to attain the 2015 ozone NAAQS. The commenter concluded that because of the complexity of non-EGU operations and control options, EPA should engage with states and affected industries to ensure an accurate inventory and control analysis.

Response: EPA agrees that securing sufficient, detailed sector- and unit-specific information for NOx emission units and related costs to use for the multi-factor test has been difficult.

In the proposed rule, to help inform further technical review and comments, the following Excel workbooks were available in the docket and referenced in the memorandum titled *Assessing Non-EGU Emission Reduction Potential:* (i) For a summary of the CoST run results *CoST Control Strategy—Max Reduction $10k 150 tpy cutoff 12 States Updated Modeling—No Replace—07–23–2020,* and (ii) for summaries of emission reductions by control technologies, *Control Summary—Max Reduction $10k 150 tpy cutoff 12 States Updated Modeling—No Replace—05–18–2020.* Note that the *CoST Control Strategy—Max Reduction $10k 150 tpy cutoff 12 States Updated Modeling—No Replace—07–23–2020* Excel workbook includes a READ ME worksheet that provides details on the parameters used for the CoST run.

To improve the underlying data used in an assessment of emission reduction potential from non-EGU sources, EPA requested comments on: (i) The existing assessment of emission reduction potential from glass furnaces and cement kilns; and (ii) emission reduction potential from other control strategies or measures on a variety of emissions sources in several industry sectors.

Comment: EPA received limited comments on the existing assessment of emission reduction potential from glass furnaces and cement kilns. A commenter noted that EPA incorrectly identified two cement kilns as eligible for SNCR installation in its analysis. Through a 2017 consent decree with EPA and the Department of Justice, SNCR was not feasible for one of the kilns because of the current configuration of the equipment. For the second kiln, SNCR was already installed because a different configuration allowed for the control installation.

Response: EPA appreciates the submittal of this information.

Comment: EPA received several comments regarding emission reduction potential from other control strategies or measures on a variety of emissions sources in several industry sectors. A few commenters indicated that a 2017 OTC paper titled *White Paper on Control Technologies and OTC State Regulations for Nitrogen Oxides (NO) Emissions from Eight Source Categories* reflects appropriate control strategies, identifies emission limits and regulations for eight source categories, and details information for four of the 12 states identified as significantly contributing to downwind areas with attainment or maintenance issues for the 2008 ozone NAAQS.

Other commenters cited a 2009 OTC paper that analyzed the cost of installing NO_X controls on ICI boilers. The paper concluded that key variables that impact cost analyses include boiler type, boiler firing type, type of fuel combusted, type of emission control, uncontrolled emission rate, controlled emission rate, capital cost of control equipment, financial costs, unit capacity factor (hours/year), flue gas flow rates and temperatures, and commodity prices. The analysis found that NO_X control costs for non-EGU emissions sources are highly variable and site-specific and the cost per ton of NO_X removed from several control technologies reviewed was significantly above the proposed rule representative cost of the selected EGU control stringency ($1,600 per ton).

Response: EPA appreciates the references provided regarding the assessment of non-EGU emissions sources/units. Non-EGU emissions sources/units are diverse, making them challenging to analyze. Nonetheless, EPA's determination with respect to emission reductions from non-EGU sources in this action is not premised on ''uncertainty,'' or lack of information. Rather, EPA's finding is based on the analysis of tranche one and tranche two controls. EPA determined that those non-EGU emission controls that could be potentially available at a cost-effectiveness comparable to EGU controls do not produce sufficient total emission reductions or downwind air quality impacts that would justify requiring them under EPA's step 3 multi-factor analysis.

EPA requested comment on the aspects of the assessment presented above of emission reduction potential from the glass and cement manufacturing sectors. The Agency did not receive any comments directly addressing this that were independent of the other comments.

In addition, EPA requested comment on the following:

- Other than glass and cement manufacturing, are there other sectors or sources that could achieve potentially cost-effective emission reductions? What are those sectors or sources? What control technologies achieve the reductions? What are cost estimates and installation times for those control technologies?
- Are there other sectors where cost effective emission reductions could be obtained by, in lieu of installing controls, replacing older, higher emitting equipment with newer equipment?
- Are there sectors or sources where cost effective emission reductions could be obtained by switching from coal-fired units to natural gas-fired units?
- For non-EGU sources without emissions monitors, what would CEMS cost to install and operate? How long would CEMS take to program and install? Are monitoring techniques other than CEMS, such as predictive emissions monitoring systems (PEMS), sufficient for certain non-EGU facilities that would not be brought into a trading program? If so, for what types of non-EGU facilities, and under what circumstances, would PEMS be sufficient? What would be the cost to install and operate monitoring techniques other than CEMS?

Comment: EPA received several comments in response to this set of questions. Two industry association commenters indicated that where feasible, facilities have already largely replaced or repowered boilers to comply with several other EPA rules (*e.g.,* boiler MACT, Regional Haze Rule, and 1-hour SO_2 NAAQS). With respect to fuel switching for boilers, one industry association stated that many of their members undertook fuel switching as a compliance strategy for the boiler MACT. Another commenter cautioned that EPA should consider other factors when evaluating the time necessary to retrofit add-on controls, including the availability of the specialized trades that are needed to complete the retrofit installation of low NOx burners and Clean Air Act permitting obligations, which increase the time needed for a retrofit.

With respect to installation timing and the cost of CEMS, three trade associations provided the following estimates:

- Installation Timing
- 28 weeks (7 months)—delivery time for a CEMS shelter with pre-installed analyzers and other equipment is about 24 weeks; installation time and programming would take about another 4 weeks.
- 16–24 weeks (4–6 months)—CEMS installation would likely take 4 to 6 months if a facility was currently ready to start. However, this timeline does not take into account the time required to obtain capital approval, issue an RFP, engage a consultant, and make any necessary structural modifications to the stack if it cannot accommodate CEMS.
- Cost
- $500,000–cost will depend on whether the stack is designed to accommodate a CEMS. If a stack is designed to support a NO_X CEMS, the cost to install, program, and certify the NO_X CEMS could be $500,000. Ongoing operation and maintenance costs are likely around $150,000 per year.
- $300,000—$400,000—capital cost for the equipment (assuming a single boiler installation) is approximately $300,000 to $400,000 (2016$). Actual costs at a given facility will vary and will depend on factors including the availability of space and the location of the CEMS air-conditioned shelter.

Additionally, one commenter stated that a rigorous PEMS, if a feasible alternative, would be more expensive than a CEMS. While another commenter stated that PEMS have proven to be very reliable and significantly less expensive to operate and maintain than CEMS. The commenter observed that PEMS minimize the up-front capital costs, as well as the on-going cost of operation, maintenance, and quality assurance.

Response: EPA thanks for the commenters for this information.

EPA requested comments on the feasibility of further controlling NO_X

from large ICI boilers and IC engines, including optimizing combustion and installing low NO_X burners.

Comment: EPA received several comments in response to this request. One commenter stated that EPA should pursue requiring additional NO_X controls on IC engines and large ICI boilers, including optimizing combustion and installing ultra-low NO_X burners and offered no specific supporting information. An industry association stated that most of their members' boilers are already equipped with low NO_X burners. The members' experiences with the retrofit installation of low NO_X burners on existing boilers are that the reductions achieved vary from boiler to boiler as a function of: (a) The existing configuration of the boiler, (b) the boiler fuel, and (c) the day-to-day operation of the boiler to meet the demands for thermal energy from the end-use processes or customers.

Another industry association noted that recent Regional Haze Rule-related analyses for forest products industry boilers indicated that the cost of installing additional controls (LNB/FGR, SNCR, or SCR retrofits) is generally more than $5,000/ton, based on representative actual emissions. The commenter stated that if EPA were to determine that NO_X controls on ICI boilers should be required, no new controls could be implemented by the 2021 ozone season and it would be difficult to implement controls before 2024. Facilities would need a minimum of four years to implement controls after promulgation of any requirement to do so because the process to undertake a retrofitting project is complex, involving design, engineering, permitting, procurement, and installation. The commenter stated that since the start of the COVID–19 pandemic, the time necessary to implement construction projects has increased considerably.

Additionally, two energy companies offered their experiences with modifying IC engines. One energy company indicated that after the modification it took three to five years to get engine performance back to previous levels. The same energy company stated that as operations evolve, where feasible, they will install newer engines, or turbines, at natural gas compressor and storage sites. A second energy company has already replaced some older uncontrolled IC engines with new, state-of-the art low NO_X compressor engines and/or combustion turbines within its fleet, intending to operate the newer IC engines preferentially over the older units. They stated that regulating IC engines at compressor stations will not result in significant reductions in actual NO_X emissions, and they do not believe it is cost-effective.

Response: EPA thanks the commenters for this information.

EPA requested comment on whether EPA should require that large non-EGU boilers and turbines—as defined in the NO_X SIP call as boilers and turbines with heat inputs greater than 250 Million British Thermal Units (mmBtu) per hour or with NO_X emissions greater than 1 ton per ozone season day [160]—within the 12 states employ controls that achieve emission reductions greater than or equal to what can be achieved through the installation of low NO_X burners.

Comment: EPA received a few comments in response to this request. One industry association stated that there is no justification for a requirement for large industrial boilers within the 12 states covered by this rule to employ controls that achieve emission reductions greater than or equal to what can be achieved through the installation of low NO_X burners. Such a requirement could be infeasible for certain types of boilers without a significant capital investment and could increase CO emissions above allowable levels. The commenter suggested that these types of requirements are better implemented through the New Source Review (NSR) permitting process where a site-specific analysis is required. Another commenter stated that such a requirement could require very significant capital investment for retrofitting certain types of existing boilers and may not be feasible for certain types of boilers.

Response: EPA thanks for the commenters for this information.

EPA requested comment on (i) the magnitude of the emission reductions that could be achieved by requiring that large non-EGU boilers and turbines install controls that achieve emission reductions greater than or equal to what could be achieved through the installation of low NO_X burners, (ii) the prevalence of these or better NO_X controls already in place on this equipment in these 12 states, and (iii) the time it typically takes to install such controls. EPA did not receive any comments in direct response to this comment solicitation.

As mentioned in the discussion above on emission reductions from the EGU sector, EPA understands that it is generally possible to install LNB on EGU boilers fairly quickly and that these burners can significantly reduce NO_X emissions. EPA notes that in the original interstate transport rule, the NO_X SIP call, the Agency concluded that controls on large, non-EGU boilers and turbines were cost effective and allowed states to include those emissions sources in their budgets as a means of providing additional opportunities to reduce state-wide NO_X emissions in a cost-effective manner.[161]

Also, five of the 12 states that are subject to this rulemaking are within the Ozone Transport Region (OTR)—Maryland, New Jersey, New York, Pennsylvania, and Virginia. As member states of the OTR, these five states are required to implement reasonably available control technology (RACT) state-wide on major sources of emissions.[162] It is likely that NO_X controls, such as low NO_X burners, are already in wide-spread use on large non-EGU boilers and turbines within these five states. However, such controls may not be as widely used in states outside of the OTR. Therefore, the Agency also solicited comments on the following:

- How effective are ultra-low NO_X burners or low NO_X burners in controlling NO_X emissions from ICI boilers?
- Are they generally considered part of the process or add-on controls? If they are part of a process, how could EPA estimate the cost associated with changing the process to accommodate ultra-low NO_X burners and low NO_X burners?
- What are the costs (capital and annual) for these as add-on control technologies on ICI boilers?
- What are the earliest possible installation times for these control technologies on ICI boilers? EPA believes it is generally possible to install low NO_X burners on EGU boilers relatively quickly and that low NO_X burners can significantly reduce NO_X emissions. EPA solicited comment on whether this is also true for large non-EGU ICI boilers.
- Do some of the emissions units included in the summary already have either add-on controls or controls that are part of a process? If so, what control is on the unit and what is the control device (or removal) efficiency?
- Natural gas compressor stations are the largest NO_X-emitting non-EGU

[160] Note that the 250 mmBTU/hr for ICI boilers and turbines is equivalent to 25 MW heat input for an EGU. The tonnage per source was 1 ton per ozone season day, and because controls on non-EGUs operate year-round, the emissions would be 365 tons per year.

[161] *See* 63 FR 57402 (October 27, 1998).

[162] One exception to the requirement of state-wide RACT within the OTR is for Virginia. Only the Northeast portion of the state is included within the OTR and only facilities within that portion of the state are subject to RACT.

sector [163] affecting the 12 states that are the subject of this final rule, and many of these facilities are powered by decades-old, uncontrolled IC engines. Should emission reductions be sought from the IC engines at these stations, either through installing controls, upgrading equipment, or other means?

- How effective is low emission combustion in controlling NO_X from IC engines?
- What is the cost (capital and annual) for low emission combustion on IC engines?
- What is the earliest possible installation time for low emission combustion on IC engines? In lieu of installing controls, is replacing older, higher emitting equipment with newer equipment a cost-effective way to reduce emissions from IC engines?
- Do some of the emissions units included in the summary already have either add-on controls or controls that are part of a process? If so, what control is on the unit and what is the control device (or removal) efficiency?

The Agency encouraged stakeholders with particular expertise, such as source owners and operators, state agencies, trade associations, and knowledgeable non-governmental organizations, to evaluate the information available in the docket and presented above and provide updates, corrections, and other information as may assist in improving EPA's ability to more accurately assess non-EGU emission control strategies relevant to addressing interstate ozone transport.

Comment: EPA received relatively few comments directly in response to this request. One NGO cited EPA's 2016 *Final Technical Support Document (TSD) for the Final Cross-State Air Pollution Rule for the 2008 Ozone NAAQS, Assessment of Non-EGU NO_X Emission Controls, Cost of Controls, and Time for Compliance Final TSD* with information on controls and costs for IC engines. Another comment encouraged the Agency to pursue controlling NO_X from ICI boilers and IC engines, including optimizing combustion and installing low NO_X burners.

Response: EPA notes that the 2016 *Final Technical Support Document (TSD) for the Final Cross-State Air Pollution Rule for the 2008 Ozone NAAQS, Assessment of Non-EGU NO_X Emission Controls, Cost of Controls, and Time for Compliance Final TSD* was prepared for the purpose of presenting and seeking comment on the then currently available information on emissions and control measures for sources of NO_X other than EGUs; it was not prepared for use in conducting a rigorous regulatory analysis under the step 3 multi-factor test, nor for establishing specific emissions limits.

3. Overcontrol Analysis

As part of the air quality analysis using the Ozone AQAT, EPA evaluated potential over-control with respect to whether (1) the expected ozone improvements would be greater than necessary to resolve the downwind ozone pollution problem (*i.e.,* beyond what is necessary to resolve all nonattainment and maintenance problems to which an upwind state is linked) or (2) the expected ozone improvements would reduce the upwind state's ozone contributions below the screening threshold (*i.e.,* 1 percent of the NAAQS; 0.75 ppb).

In *EME Homer City,* the Supreme Court held that EPA cannot ''require[ ] an upwind State to reduce emissions by more than the amount necessary to achieve attainment in every downwind State to which it is linked.'' 572 U.S. at 521. On remand from the Supreme Court, the D.C. Circuit held that this means that EPA might overstep its authority ''when those downwind locations would achieve attainment even if less stringent emissions limits were imposed on the upwind States linked to those locations.'' *EME Homer City II,* 795 F.3d at 127. The D.C. Circuit qualified this statement by noting that this ''does not mean that every such upwind State would then be entitled to less stringent emission limits. Some of those upwind States may still be subject to the more stringent emissions limits so as not to cause other downwind locations to which those States are linked to fall into nonattainment.'' *Id.* at 14–15. As the Supreme Court explained, ''while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid 'under-control,' *i.e.,* to maximize achievement of attainment downwind.'' 572 U.S. at 523. The Court noted that ''a degree of imprecision is inevitable in tackling the problem of interstate air pollution'' and that incidental over-control may be unavoidable. *Id.* ''Required to balance the possibilities of under-control and over-control, EPA must have leeway in fulfilling its statutory mandate.'' *Id.*[164]

Consistent with these instructions from the Supreme Court and the D.C. Circuit, EPA first evaluated whether reductions resulting from the emission budgets for EGUs in 2021 and 2022 can be anticipated to resolve any downwind nonattainment or maintenance problems. As discussed in Section VI.D.1, the proposed control stringency (represented by a $1,600 per ton cost threshold) was adjusted to a control stringency that includes optimization of existing SNCRs (represented by a $1,800 per ton cost threshold) in this final rule. This assessment shows that the emission budgets reflecting $1,800 per ton would change the status of one of the two nonattainment receptors (first shifting the Stratford monitor to a maintenance-only receptor in 2021 and then shifting that monitor to attainment in 2022). However, no other nonattainment or maintenance problems would be resolved in 2021 or 2022. EPA determined that none of the 11 states are solely linked to the Stratford receptor that is resolved at the $1,800 per ton level of control stringency in 2022.

Reductions resulting from the $1,800 per ton emission budgets for EGUs would shift the Houston receptor in Harris County, Texas, from maintenance to attainment in 2023. These emission reductions would also shift the last remaining nonattainment receptor (the Westport receptor in Fairfield, Connecticut) to a maintenance-only receptor in 2024. No nonattainment or maintenance receptors would remain after 2024.

Next, EPA evaluated the potential for over-control with respect to the 1 percent of the NAAQS threshold applied in this final rulemaking at step 2 of the good neighbor framework for the $1,800 per ton cost threshold level for each year downwind nonattainment and maintenance problems persist (*i.e.,* 2021 through 2024). Specifically, EPA evaluated whether the emission levels would reduce upwind EGU emissions to a level where the contribution from any of the 12 upwind states would be below the 1 percent threshold that linked the upwind state to the downwind receptors. EPA finds that under the $1,800 per ton EGU cost threshold level for 2021 to 2024 emission levels, all 12 states that contributed greater than or equal to the 1 percent threshold in the base case continued to contribute greater than or equal to 1 percent of the NAAQS to at least one remaining downwind nonattainment or maintenance receptor for as long as that receptor remained in nonattainment or maintenance. For more information about this assessment, refer to the

[163] Based on data from the 2017 NEI database.

[164] Although the Court described over-control as going beyond what is needed to address ''nonattainment'' problems, EPA interprets this holding as not impacting its approach to defining and addressing both nonattainment and maintenance receptors. In particular, EPA continues to interpret the Good Neighbor provision as requiring it to give independent effect to the ''interfere with maintenance'' prong. *Accord Wisconsin,* 938 F.3d at 325–27.

Ozone Transport Policy Analysis Final Rule TSD and the Ozone AQAT.

Since emission reductions resulting from the $1,800 per ton emission budgets for EGUs are not projected to result in the expected ozone improvements: (1) Being greater than necessary to resolve the downwind ozone pollution problem (*i.e.,* beyond what is necessary to resolve all nonattainment and maintenance problems to which an upwind state is linked) or (2) reducing the upwind state's ozone contributions below the screening threshold (*i.e.,* 1 percent of the NAAQS; 0.75 ppb), EPA finds that the $1,800 control strategy does not result in overcontrol.

Based on the multi-factor test applied to both EGU and non-EGU sources and subsequent assessment of overcontrol, EPA finds that the emission reductions associated with the $1,800 per ton control stringency for EGUs constitute elimination of significant contribution and interference with maintenance without overcontrol from the 12 linked upwind states. Therefore, as discussed in section VII, EPA is establishing emission budgets for EGUs in the 12 linked states that reflect the remaining allowable emissions after the emission reductions associated with the $1,800 per ton control stringency have been achieved. For additional comments and responses and details about the test and the overcontrol analysis, see the RTC and Ozone Transport Policy Analysis Final Rule TSD.

VII. Implementation of Emission Reductions

A. Regulatory Requirements for EGUs

The CSAPR established a seasonal NO_X trading program for states determined in that rulemaking to have good neighbor obligations with respect to the 1997 ozone NAAQS. The CSAPR Update established a new seasonal NO_X trading program for 22 states determined to have good neighbor obligations with respect to the 2008 ozone NAAQS—the CSAPR NO_X Ozone Season Group 2 Trading Program—and renamed the seasonal NO_X trading program established in the CSAPR, which now covers only Georgia, the CSAPR NO_X Ozone Season Group 1 Trading Program.[165] Each of these trading programs for seasonal NO_X emissions established state-level budgets for EGUs and allowed affected sources within each state to use, trade, or bank allowances within the same trading group for compliance. In the CSAPR NO_X Ozone Season Group 1 and Group 2 trading programs, sources are required to retire one Group 1 or Group 2 allowance, respectively, for each ton of NO_X emitted during a given ozone season. EPA is using the same regional trading approach, with modifications to reflect updated budgets, trading groups, and certain additional revisions, as the compliance remedy implemented through the FIPs to address interstate transport for the states having further good neighbor obligations with respect to the 2008 ozone NAAQS in this rule.

Of the 22 states currently covered by the CSAPR NO_X Ozone Season Group 2 Trading Program, EPA is establishing revised budgets for 12 states, as explained below. Therefore, EPA is creating an additional geographic group and trading program comprised of these 12 upwind states with remaining linkages to downwind air quality problems in 2021. This new group, Group 3, will be covered by a new CSAPR NO_X Ozone Season Group 3 Trading Program. Aside from the removal of the 12 covered states from the current Group 2 trading program, this rule leaves unchanged the budget stringency and geography of the existing CSAPR NO_X Ozone Season Group 1 and Group 2 trading programs.

EPA is using the existing CSAPR NO_X ozone season allowance trading system framework, established in the CSAPR for Group 1 and used again in the CSAPR Update for Group 2, to implement the emission reductions identified and quantified in the FIPs for this rule. The new Group 3 trading program is being codified at 40 CFR part 97, subpart GGGGG. As with the existing CSAPR trading programs, emissions monitoring and reporting will be performed according to the provisions of 40 CFR part 75, and decisions of the Administrator under the program will be subject to the administrative appeal procedures in 40 CFR part 78.

Comment: EPA received several comments suggesting that Louisiana not be included in the Group 3 trading program. Commenters suggested that EPA has no basis for including Louisiana in the Group 3 trading program because its linkage geography (*i.e.,* to a receptor in Texas) is separate from the 11 remaining Group 3 states which have linkages to receptors in Connecticut. Several commenters also raised the possibility of under-control in the 12-state trading program should EPA allow trading of emission allowances between Louisiana and the remaining 11 states.

Response: EPA disagrees with comments that Louisiana should not be included in the Group 3 trading program. All covered states in the Group 3 trading program, regardless of the downwind monitors to which they are linked, are subject to emission budgets established based on the same set of emission control measures applied at the same levels of stringency. In similar circumstances in earlier rulemakings to address the good neighbor provision, EPA has routinely included states in a common trading program based on a uniform level of control stringency, not based on whether the states were all found to be linked to the same downwind receptors. For example, the states required to participate in the Group 2 trading program under the CSAPR Update included one state linked only to downwind receptors in Connecticut, two states linked only to downwind receptors in Michigan, and two states linked only to downwind receptors in Texas, as well as other states linked to downwind receptors in multiple states. *See* 81 FR 74538 tbls. V.E–2 and V.E–3.

Moreover, all states subject to the new Group 3 trading program will be required to comply with the assurance provisions in this final action. The assurance provisions ensure that emissions within a covered state do not exceed that state's emission reduction obligations (see section VII.C.2.). The assurance provisions, and associated variability limits, impose an additional allowance surrender requirement when a state's emissions exceed its budget for a given control period by 21 percent. The additional allowance surrender requirement associated with the assurance provisions provides an incentive for sources within a state to comply with the emission budgets for a given control period, while accounting for the inherent variability in operations and emissions from one year to the next. By limiting the degree to which any state's emissions exceed that state's emissions budget, the assurance provisions reduce concerns that a state covered by the new Group 3 trading program would be able to routinely rely on surplus allowances purchased from another state in the trading program in a different geographic region (or in the same geographic region) instead of reducing emissions within the state. Establishing assurance levels with compliance penalties responds to and complies with the D.C. Circuit's holding in *North Carolina* requiring EPA to ensure that sources in each state meet their good neighbor obligations while

[165] For states that were determined in the CSAPR Update to still have good neighbor obligations with respect to the 1997 ozone NAAQS in addition to the 2008 ozone NAAQS, participation in the Group 2 trading program replaced participation in the Group 1 trading program as the FIP remedy for such states' obligations with respect to the 1997 NAAQS. *See* 81 FR 74509.

still taking advantage of the benefits of an interstate trading program. *See* 531 F.3d at 908. *See also* 81 FR 74566–67.

Comment: Some commenters asserted that implementation of emission reductions through a state-level, seasonal emissions budget program with trading flexibilities is not sufficient to ensure that reductions are realized on high ozone days when they are most needed. These commenters suggested that EPA replace or supplement its emission trading program with unit-specific emission rate requirements applied on a shorter time scale (*e.g.,* daily). Commenters assert that existing controls must be maintained and operated in accordance with good pollution control practices whenever feasible. Commenters assert that shorter-term NO_X emission rate limits must ensure that SCRs are operated in accordance with good pollution control practices at all times the units are operating. They suggest that short-term limits are necessary to prevent units from turning controls off intermittently on days with high ozone in order to harvest additional power that would otherwise be used for control operation.

Response: EPA is finalizing the implementation of required emission reductions through the same ozone season trading program structure successfully used in prior CSAPR rules, CAIR, and the NO_X Budget Trading Program associated with the 1998 NO_X SIP Call. These trading programs have been demonstrated to be highly effective at achieving emission reductions. For instance, as discussed in greater detail below, EPA has previously demonstrated that in the first CSAPR Update compliance period (*i.e.,* the 2017 ozone season), the budget drove sources, nearly uniformly, to operate their controls for that control period.[166] EPA acknowledges that without adjustments in budget stringency to ensure continued operation of the selected control strategy (or equivalent reductions), this analysis may not hold in later years of a trading program should a sufficient bank of allowances develop that the price signal for continued control operation is weakened. However, EPA has addressed that concern in this rule by making downward adjustments in the budgets to account for known fleet changes. Early in the implementation of the CSAPR Update in 2017, when emission budgets were binding and allowance prices were higher, EPA conducted an analysis on how effectively units were operating their SCRs (1) in response to a trading program implementation measure and (2) on High Electricity Demand Days (HEDD). This analysis was done in the context of responding to petitions from Maryland and Delaware under CAA section 126(b) petition.[167] With this rule in place as of 2021, the situation will be comparable and the analysis of 2017 data provides a good indication of how EPA anticipates sources with post-combustion controls will respond to a trading program implementation measure designed to be a full remedy. Moreover, EPA performed the same analysis using 2019 data and continues to find that units operate their SCRs on HEDD as described below.

In the Maryland/Delaware CAA section 126(b) action, EPA examined the complete set of 2017 ozone-season data and did not find evidence of sources regularly idling controls on high ozone days when subject to a sufficiently stringent budget.[168] EPA found that, based on 2017 emissions data reflecting implementation of the CSAPR Update, 261 of 274 units had ozone-season emission rates below 0.20 lb/mmBtu, indicating they were likely operating their post-combustion controls through most of the ozone season. On average, the 274 units were operating at an average emission rate of approximately 0.088 lb/mmBtu.[169] Consequently, EPA found that on average, SCR-controlled units were operating their SCRs throughout the season and that the petitioner's assertion of the likelihood of trading programs leading to widespread idling of controls was not borne out in the most recently available data. In years following 2017, EPA has seen the seasonal emission rates of some SCR-controlled units increase, while the vast majority continue to operate and optimize their controls. As noted above, this is attributable to the partial nature of the CSAPR Update and consequently that program not being configured to account for fleet changes after 2017. Nonetheless, EPA's analysis of 2017 data shows that the CSAPR Update regional trading program and other EPA regional trading programs have driven significant reductions and can provide continued incentive for control operation in a full-remedy context, so long as the budget is sufficiently stringent.

EPA has revisited the aforementioned examinations of SCR performance rates using 2019 hourly NO_X emissions data in place of 2017 data. While there was an increased frequency and number of units turning off their controls in 2019, EPA again found that this did not happen during the hours with the highest generation.[170] As was shown in the analysis conducted for the Maryland/Delaware action, and confirmed based on 2019 analysis, SCR-controlled units generally operated with lower emission rates during high generation hours, suggesting SCRs generally were in better operating condition—not worse, let alone idling—during those days/hours. In other words, EPA compared NO_X rates for EGUs for hours with high energy demand and compared them with seasonal average NO_X rates and found very little difference, just as it had observed in the 2017 data. Thus, the data do not support the notion of wide-spread reduction of SCR operation on high demand days. Moreover, the auxiliary power used for control operation is small—typically less than one percent of the generation at the facility—and it is, therefore, unlikely that sources would cease operation of controls for such a limited energy savings. Instead, the previous analysis indicated that increases in total emissions on days with high generation are generally the result of additional units that do not normally operate coming online to satisfy increased energy demand and units that do regularly operate increasing hourly utilization, rather than reduced functioning of control equipment. In this action, the Agency concludes that while short-term limits and a regional trading budgets are not necessarily mutually exclusive and could complement each other (and do in fact complement each other since many states already have established emission rate requirements for their EGUs through other control programs such as RACT), in this specific instance, where the Agency is addressing regional air quality issues with regionally uniform levels of control through the flexibilities afforded by a mass-based trading program, specific unit-level control requirements, particularly short-term emissions limits, are not necessary, so long as the mass-based budget is sufficiently stringent. This rule addresses the need for sufficiently stringent budgets through budget adjustments in each year through 2024

[166] Discussion of Short-term Emission Limits (EPA–HQ–OAR–2018–0295–0026), available in the docket for this action.

[167] 83 FR 50444 (October 5, 2018).

[168] Discussion of Short-term Emission Limits (EPA–HQ–OAR–2018–0295–0026).

[169] 83 FR at 50466.

[170] *See Units_Cycling_SCR_2017_and_2019.xlsx* for a description of the units cycling in 2017 and 2019 and *NOxRateOfSCRunitsDuringHighRegionalDemand_2017_and_2019.xls* for the analysis of unit rates on HEDD.

to ensure that stringency levels account for known future changes in the fleet.

Further, EPA finds there to be environmental benefits associated with a mass-based trading program that controls units' total amounts of emissions. This creates an incentive structure resulting in lower-emitting sources tending to operate more than dirtier units. Moreover, EPA's implementation program provides—through an allowance price—an incentive to optimize emissions performance as much as possible. This approach not only encourages units to achieve the rates assumed in the budget-setting process, but to perform at even better rates where better performance can be achieved at a cost lower than the allowance price. By contrast, an implementation mechanism that provides a unit-specific emission rate would not incentivize the unit to perform better than its rate requirement. Thus, the trading program encourages controls to not only operate on high electric demand days, but it could provide a unit additional incentive (through its allowance price) to outperform an equivalent ermission rate assumption implemented through a unit-specific rate requirement.

Finally, as other commenters pointed out, unit-specific short-term emission rates pose significant implementation and rulemaking challenges, because there are more unit-specific characteristics that must be taken into account to arrive at unit-specific rate requirements. In establishing a trading program, EPA is better able to rely with confidence on fleet averages used for calculating state budgets. Were EPA to choose to implement a unit-specific emissions rate regime for implementation, the compliance flexibility afforded by emissions trading would not be available and it would not be possible to rely on fleet average information to the same extent for purposes of establishing appropriate levels of control stringency. EPA would likely be unable to establish such requirements or mandate them in time to meet the 2021 Serious area attainment date.

B. Quantifying State Emissions Budgets

EPA is quantifying state emission budgets consistent with the approach used in the CSAPR Update. However, given *Wisconsin's* direction to implement a full remedy, EPA must address upwind emission reduction potential beyond the initial year for which it is establishing emission budgets. Whereas in the partial-remedy context of the CSAPR Update, EPA established budgets based only on its assessment of the 2017 analytic year and noted it would revisit future years at a later date, in this action EPA is simultaneously looking at budgets for all relevant future years to comply with the full-remedy directive. Consequently, for the Group 3 states EPA is quantifying specific budgets in each year to ensure that EGUs continue to be incentivized to implement the full extent of EPA's selected control stringency while linkages to downwind nonattainment and maintenance receptors remain unresolved. In effect, by doing this, EPA is accounting for scheduled fleet turnover after the first-year budget. For instance, if State X's budget was 100 tons in 2021, but there are 10 tons of emissions from a unit scheduled to retire at the end of the year and 5 tons expected from a new unit coming online, then the state emission budget for 2022 will reflect these scheduled changes by establishing a budget of 100 tons—(10 tons − 5 tons) = 95 tons for the subsequent year. This adjustment in methodology reflects the need to anticipate and respond to scheduled fleet turnover in the power sector in ensuring that the control stringency selected to eliminate significant contribution remains incentivized. Based on the Agency's experience implementing prior good neighbor trading programs, setting emissions budgets that do not account for planned retirements in subsequent years can lead to an erosion in the allowance price signal and hence a reduced incentive to take the mitigation measures identified in EPA's significant contribution determination (*e.g.,* optimize SCRs). EPA's air quality projections demonstrate that even with a $1,800 per ton EGU control stringency, the Group 3 states continue to contribute above the 1 percent of the NAAQS threshold to at least one receptor whose nonattainment and maintenance concerns persist through the 2024 ozone season (with the exception of Louisiana, as discussed in more detail below). As such, and in order to implement a full remedy as required under the *Wisconsin* decision, EPA is determining that it is necessary to design a step 4 implementation framework that effectively ensures the continued optimization of existing SCR and SNCR controls and the incentive to install or upgrade combustion controls for so long as downwind nonattainment and maintenance concerns persist. Therefore, for all Group 3 states except Louisiana, the emission budget setting process described below applies to each year from 2021 through 2024, with the budgets held constant from 2024 onwards. For Louisiana, the emission budget setting process applies to 2021 and 2022 only, with the budget held constant from 2022 onwards, as the Houston receptor to which Louisiana is linked is projected to be resolved by the 2023 ozone season.

EPA is not increasing the stringency of the program over these years in the sense of requiring any further emission reductions than the control stringency represented by $1,800 per ton achieves. Rather, these budget adjustments account for pre-existing, on-going changes in the EGU sector, which if not accounted for, could significantly weaken the incentive to optimize existing SCR and SNCR controls and install or upgrade combustion controls. By determining emissions budgets for a given emissions control across a range of years (*e.g.,* 2021–2024), EPA is able to best reflect the realization of that technology in any given year. For instance, a unit may be scheduled to retire (independent of any environmental regulation) in 2023. Therefore, the same $1,800 per ton uniform control stringency (*i.e.,* SCR and SNCR optimization, and combustion control installation or upgrade) will produce a different state emissions level (*i.e.,* budget) in 2021 and 2024 due to this change in fleet composition. Having the emissions estimated for each year allows EPA to best ensure the reductions available from the identified control stringency continue to be achieved to eliminate that state's significant contribution. This type of phased implementation preserves the intended control stringency of the rule and is consistent with the direction under the *Wisconsin* decision to promulgate a full-remedy rule. In prior trading programs, commenters observed that the program's static emission budgets quickly fell behind the rapid pace of change in the power sector fleet. As this occurs, a large allowance bank builds and the price of allowances falls below the price in the initial years. For example, the price of CSAPR Update Group 2 allowances started out at levels near $800 per ton in 2017 and provided a strong signal for the mitigation technology identified in the significant contribution determination. However, in subsequent years as the fleet of covered EGUs changed, the price of those allowances declined to less than $70 per ton in July 2020.[171] Stakeholders have pointed out that these low prices could allow for some backsliding of the emission control technologies (*e.g.,* reduced incentive to operate SCR

[171] Data from S&P Global Market Intelligence.

controls) that were initially determined to be cost-effective and required to eliminate significant contribution. At the same time that the incentive for EPA's selected control stringency weakens, EPA's data show that downwind air quality receptors continue to persist at step 1, and the overall level of anthropogenic emissions from an upwind state continues to contribute to those receptors above the contribution threshold at step 2. Under these conditions, a legal basis exists within EPA's 4-step framework to undertake measures that ensure EGUs continue to implement EPA's selected control stringency. Stated differently, EPA is confident that it is well within its statutory authority under CAA section 110(a)(2)(D)(i)(I) to impose on each covered EGU in a linked upwind state an emission limit that is enforceable and permanent, reflective of the control stringency EPA has determined is needed to eliminate significant contribution from that state. EPA's approach in this rule better incentivizes the selected control stringency while retaining the flexible compliance benefits of an interstate-trading approach to implementation.[172]

In summary, in order to implement a full remedy, EPA is implementing ozone season budgets for each year that reflect ongoing incentivization of the emission reduction measures identified in this rule, with a final budget being implemented in 2024 (the last year EPA projects downwind receptors to remain unresolved) and then held constant for each year thereafter. EPA requested comment on this approach and is finalizing the same approach that it proposed.

Comment: EPA received comment noting some stakeholders' strong support for the issuance of NO_X emissions budgets that were updated each ozone season to account for fleet changes. Commenters also claimed that failing to do so would raise concerns that, as the cost of allowances falls, units would be incentivized to buy cheaper allowances rather than optimize controls. They note this dynamic would undercut the purpose of the trading program, and EPA's efforts to address this issue by adjusting the NO_X emissions budgets each ozone season in response to fleet changes are necessary to avoid such an outcome. They conclude it is a fair and equitable practice that ensures continued optimization of emissions controls. EPA also received comment opposing this methodology, generally for the stated reasons that (1) the methodology differs from past EPA methodology, (2) EPA's budget methodology should allow for other existing sources to replace the retiring generation by assuming a corresponding replacement or even increase in emissions, (3) some of the scheduled future retirements are uncertain, and (4) reducing budgets based on retirements but continuing to allocate allowances to those retiring units penalizes the non-retiring units by reducing their allocation in a manner disproportionate to their needs.

Response: EPA determined that in order to fulfill the *Wisconsin* directive to implement a full remedy, these phased budgets are necessary to ensure an incentive for existing controls to continue to operate. Not including such a mechanism in a full-remedy approach would lead to the possibility highlighted in EPA's proposed rule and some comments, and supported by historical data, where the incentive to operate controls decreases over time with fleet turnover, even though upwind states remain linked to downwind receptors. If EPA did not include such a phase-down mechanism in budgets accounting for fleet turnover, then the other alternative to ensure a full remedy would be unit-specific emission rate requirements (as the only alternative to continue to incentivize existing controls to operate). EPA notes that the some of the commenters who oppose the phase-down mechanism which preserves the trading program's effectiveness across time also support EPA's trading program as the preferred implementation mechanism relative to unit-specific emission rate requirements and even explicitly oppose unit-specific emission rate requirements in some cases. However, the continued reliance on a trading program for full-remedy policy solutions requires this mechanism to ensure the program's effectiveness remains robust in the context of scheduled fleet turnover.

With regard to comments that this approach is different than EPA's past approaches, EPA notes that this approach is not unprecedented or inconsistent with past EPA programs. In the first CSAPR rule, EPA implemented phase 1 and phase 2 NO_X budgets for states, which tightened over time even as the rule stringency remained constant for that pollutant. In the CSAPR Update, EPA examined only 2017 for its partial remedy and noted it would revisit future years to see if additional reductions were necessary when implementing a full remedy. This rule achieves that full remedy.

Comment: Some commenters suggested that EPA should assume increased generation from existing units (beyond recent historical data and beyond baseline levels) as some of these units retire, thus offsetting some of the emission reductions.

Response: EPA first notes that it does include emissions and additional generation from additional new sources that are under construction and/or that have received their permit approvals. This new-unit generation offsets the amount of retiring generation in EPA's baseline at the regional level. Second, EPA notes that in both the proposed and the final rule it evaluated the assumed fossil generation from covered sources within its future year baseline (after factoring in retiring fossil generation) relative to historical trends and continues to find that its assumed future level of fossil fuel-fired generation is well within the trend observed over the past four years. In other words, whereas fossil generation from the covered fleet in these 12 states has been declining at approximately 2 percent on average over the past four years, EPA's future year baseline contains fossil generation well within this historical trend (*i.e.,* continued decline at less than 2 percent). Moreover, EPA's assumption that existing, higher-emitting sources will, on average, not raise their generation levels in the future is consistent not only with historical trends, but also with both modeling outlooks for future generation from these EGUs as well as announced plans to replace retiring fossil generation with non-fossil sources. For many of these scheduled retirements, utilities not only have broad plans stating their intention to replace higher-emitting fossil sources with lower emitting sources, but already have those plans for replacement generation, such as renewable technologies, underway.[173] [174]

Comment: Some stakeholders note the uncertainty of some scheduled retirements, and the potential for them

[172] EPA continues to believe in the value of an interstate trading program for implementation of good neighbor obligations for EGUs. Through trading, the ultimate choice of compliance strategy is left to EGU owners and operators. EPA is not imposing an enforceable mandate that each EGU with an existing SCR or SNCR, or ability to install or upgrade combustion controls undertake the control stringency represented by the $1,800 per ton threshold. Sources have maximum flexibility to undertake compliance strategies that meet their specific operational and planning needs.

[173] ''Coal retirements in Indiana could be hastened by 2.6GW of wind, solar and energy storage''. Available at *https://www.energy-storage.news/news/coal-retirements-in-indiana-could-be-hastened-by-2.6gw-of-wind-solar-and-en#.*

[174] ''Duke Vows to Triple Renewable Capacity, Reach Net-Zero Emissions by 2030''. Utility Dive, October 2020. Available at. *https://www.utilitydive.com/news/duke-vows-to-double-renewables-capacity-reach-net-zero-methane-emissions-b/586791/.*

to be possibly altered pending information from regulatory entities.

Response: With regard to commenters noting that some retirements are uncertain and therefore should not be factored into EPA future baseline and budget estimates, EPA notes it is using the best available data at the time of the final rule and that no retirement plans included in the final rule were contradicted by commenter data submitted on the proposed rule. EPA relies on a compilation of data from DOE EIA Form 860 where facilities report their future retirement plans and on the information included in its NEEDS database. This information is considered to be highly reliable, real-world information that provides EPA with the high confidence that such retirements will in fact occur. Indeed, in response to commenters' suggestions to factor in yet additional potential retirements, EPA has declined to do so where the intention to retire a unit is not abundantly supported by utility-reported information. Despite this conservative approach to identifying known fleet changes, if a unit's future retirement status ultimately does not materialize on the scheduled date, EPA observes that such an unexpected departure from the currently available evidence would still not contradict its future state-level and region-level estimates. EPA's approach of using historical data and incorporation only of announced fleet changes in estimating its future baseline means that its future year baseline generation and retirement outlook for higher emitting sources is likely conservative, as EPA does not assume any retirements beyond those that are announced. In other words, there are more likely to be additional future EGU retirements that materialize post-rule signature that impact the 2021–2024 timeframe than there are to be announced retirement plans that are subsequently unwound. The analytic tools and information resources used in any estimation of state and regional future EGU emission totals inherently have some discrepancies between what is projected for the future and how the future unfolds—particularly at the unit level. But those potential unit-level discrepancies, inherent in the enterprise of prediction, would at most impact emissions both ways and do not, on their own, undermine EPA's aggregate state and regional estimates. Additionally, as noted elsewhere, EPA's use of a market-based program, a starting bank of converted allowances, availability of additional converted allowances through the ''safety valve'' mechanism, and variability limits are all features that will readily accommodate whatever small discrepancies there may be between EPA's projection of the EGU fleet and actual fleet conditions in any of the relevant future years. Therefore, EPA's resulting state emission budgets are robust to the inherent uncertainty in future year baseline conditions.

Finally, with regard to comments concerning the impacts of the successive year emissions budget changes' on unit-level allocations for non-retiring units, EPA considers this not to be a budget-setting issue, but rather a question of how to allocate allowances within the budget. Thus, this topic is addressed in section VII.C.3.

EPA's emissions budget methodology and formula for establishing Group 3 budgets are described in detail in the Ozone Transport Policy Analysis Final Rule TSD and summarized below.

For determining emission budgets, EPA generally used historical ozone season data from the 2019 ozone season, the most recent data whose representativeness was not called into question by the unusual circumstances of the Covid-19 pandemic. This is similar to its approach in the CSAPR Update where EPA began with 2015 data (the most recent year at the time). As in the CSAPR Update, EPA combined historical data with IPM data to determine emission budgets. The budget setting process has three primary steps:

(1) Determine a future year baseline—Start with the latest reported historical unit-level data (*e.g.,* 2019), and adjust any unit data where a retirement or new build is known to occur by the baseline year. This results in a future year (*e.g.,* 2021) baseline for emissions budget purposes.[175]

(2) Factor in additional emission controls for the selected control stringency (*e.g.,* $1,800 per ton)—For the unit-level emission control technologies identified in this control stringency, adjust the baseline unit-level emissions and emission rates. For example, if an SCR-controlled unit had a baseline greater than 0.08 lb/mmBtu, its rate and corresponding emissions would be adjusted down to levels reflecting its operation at 0.08 lb/mmBtu.

(3) Incorporate generation shifting—Use IPM in a relative way to capture the reductions expected from generation shifting at a given $ per ton level that reflects control optimization (constrained to within-state shifting).

By using historical unit and state-level NO_X emission rates, heat input, and emissions data at step 1 of the budget setting process, EPA is grounding its budgets in the most recent representative historical operation for the covered units.[176] This data set is a reasonable starting point for the budget setting process as it reflects the latest data reported by affected facilities under 40 CFR part 75. The reporting requirements include quality control measures, verification measures, and instrumentation to best record and report the data. In addition, the designated representatives of EGU sources are required to attest to the accuracy and completeness of the data. In step 1 of the budget setting process, EPA first adjusted the 2019 ozone-season data to reflect committed fleet changes under a baseline scenario (*i.e.,* announced and confirmed retirements, new builds, and retrofits that have already occurred). For example, if a unit emitted in 2019, but retired in 2020, its 2019 emissions would not be included in the 2021 estimate. For units that had no known changes, the 2021 emissions assumption was the actual reported data from 2019 at this first step of adjusting the baseline. EPA also included known new units and scheduled retrofits in this manner. Using this method, EPA arrived at a baseline emission, heat input, and emission rate estimate for each unit for a future year (*e.g.,* 2021), and then was able to aggregate those unit-level estimates to state-level totals. These state-level totals constituted the state's baseline from an engineering analytics perspective. The ozone-season state-level emissions, heat input, and emissions rates for covered sources under a baseline scenario were determined for each future year examined (2021 through 2024). Because 2024 is the last ozone season for which EPA projects continued contribution to any downwind receptors, 2024 is the last year for which EPA is making an adjustment to emission budgets.

For step 2 of the emissions budget setting process, EPA examined how the baseline emissions and emission rates would change under different control stringencies for EGUs. For instance, under the SCR optimization scenario, if a unit was not operating its SCR at 0.08 lb/mmBtu or lower in the baseline, EPA

[175] EPA used 2019 historical data in the proposed rule because that was the latest available at that time. EPA took comment on using 2020 ozone-season data at the final rule as that data became available in November of 2020, and discusses that topic later in this section.

[176] EPA notes that historical state-level ozone season EGU NO_X emission rates are publicly available and quality assured data. They are monitored using CEMS or other methodologies allowed for use by qualifying units under 40 CFR part 75 and are reported to EPA directly by power sector sources.

lowered that unit's assumed emission rate to 0.08 lb/mmBtu and calculated the impact on the unit's and state's emission rate and emissions. Note, the heat input is held constant for the unit in the process, reflecting the same level of unit operation compared to historical 2019 data. An improved emission rate is then applied to this heat input, reflecting control optimization. In this manner, the state-level baseline totals from step 1 reflecting known baseline changes were adjusted to reflect the additional application of the assumed control technology at a given control stringency.

Finally, at step 3 of the emissions budget setting process, EPA used IPM to capture any generation shifting at a given control stringency necessary for the majority of the respective emission control technology to operate. EPA explains how it accounts for generation shifting in more detail in in section VI.B and in the Ozone Transport Policy Analysis Final Rule TSD. In this rule, as a proxy for the near-term reductions required by 2021, EPA has constrained generation shifting to occur only within-state.

EPA requested comment on the approach described above, as well as alternatives discussed in the budget-setting TSD. Specifically, EPA requested comment on its consideration of using 2020 data in place of 2019 data as the most recent historical data set to inform final rule budgets. Although the reduction potential associated with the selected control stringency described in section VI would likely not change substantially with that data set, the baseline values calculated in step 1 of the emissions budget setting process may change significantly and possibly result in lower or higher state-level emission budgets.

Comment: EPA received comment highlighting the unique impact of the Covid-19 pandemic on 2020 emissions and generation data due to changes in market conditions that may not be representative in subsequent years (*e.g.,* changes in net generation, time-of-day impacts on demand, and natural gas prices). Commenters cautioned against relying on 2020 data for informing step 3 analysis in this rule.

Response: EPA is finalizing, as proposed and consistent with these comments, the continued use of 2019 EGU data as the latest, most representative historical year for informing the Agency's step 3 analysis. EPA examined the unique Covid-related impacts on the power sector and energy market data. It observed significant changes for some variables where the change appeared to be specific to the 2020 dataset and pandemic-related conditions, and therefore not representative of future power sector operations or market conditions. These included changes in natural gas prices, the demand profiles for electricity (which influence what units generate at different parts of the day), and overall electricity demand. This was further borne out by comparing quarterly year-over-year data which revealed that changes in Q4 2020 data relative to Q4 2019 data were not as pronounced as changes in Q2 2020 data relative to Q2 2019 data, indicating the temporary status of some of changes observed in the 2020 ozone season. For instance, Q2 2020 NO_X emissions were down 20 percent year-over-year, but Q4 2020 NO_X emissions were down only 9 percent year-over-year. EPA provides additional detail in the RTC document on its consideration of 2019 and 2020 data as the most recent historical representative year of the power sector. Had EPA utilized 2020 data as the starting point for its future year baseline in Engineering Analytics, it likely would have been incorporating some 2020-fleet operational changes (and corresponding emission levels) unique to the pandemic year instead of fleet changes expected to endure into post-2020 years. As also explained in the RTC document, while EPA did continue to use 2019 as the starting historical data set, it recognized commenters' observations that New York and Virginia were differently situated in that their emissions were higher in 2020 than 2019 (whereas all other states were lower, at least partially attributable to Covid impacts). Additionally, reflecting the 2020 fleet dynamics in the future year baseline for New York helps capture some of the dynamics related to the retirement of one unit at the Indian Point nuclear facility as pointed out by the commenter. To account for these atypical circumstances, EPA incorporated upward adjustments to its future year baseline values for New York and Virginia that reflected the incremental changes in heat input, generation, and emissions for 2020 relative to 2019.

Comment: Some commenters suggested EPA use a multi-year historical baseline for its step 3 analysis on the theory that this would provide a more robust set of historical data and a more representative baseline for the power sector.

Response: EPA is finalizing use of the same single-year historical baseline approach it used in the proposed rule. This approach is similar to the CSAPR Update, where EPA also relied on a single-year historical baseline to inform its step 3 approach. EPA's interest in a historical data set to inform this part of the analysis is to capture the current status of the power sector (*i.e.,* incorporating the latest new builds, retirements, and unit operation in response to current regulations and market conditions). Incorporating prior years through a multi-year historical baseline would dilute, rather than strengthen, the methodology's ability to capture the most representative perspective of the current power sector. It would in effect include units that no longer exist, market conditions that have since evolved, and a regulatory landscape that has likewise since changed. It would diminish the effect of newer generation resources that have come online which reflect the impacts of the latest changes in technology performance and cost levels. EPA finds that, particularly at the state and regional level, the most recent year data is a better representation and basis for future year baselines rather than incorporating older data. In other applications, where the purpose is not forward looking, but rather distribution-based and unit-level focused, lengthier historical baselines have more value. See additional response to this comment in the State Emission Budgets section of the RTC document.

C. Elements of New Trading Program

To implement the updated emissions budgets developed according to the process described in section VII.B, EPA is requiring EGUs in each of the 12 covered states to participate in a new CSAPR NO_X Ozone Season Group 3 Trading Program. The provisions of the new ''Group 3'' trading program are largely identical to the provisions of the ''Group 2'' trading program in which affected EGUs in the 12 covered states participated from 2017 through 2020. The principal differences between the Group 2 and Group 3 trading programs are the differences in state budgets and geography established in this rule to address the covered states' remaining obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. One other difference, which EPA is adopting in response to comments, concerns the determination of which units are eligible to receive allocations of allowances for use in the new Group 3 trading program as ''existing units'' under EPA's default allocation methodology. Specifically, certain units with scheduled future retirement dates will not receive allocations as existing units for use in the Group 3 trading program starting with the first control period for which the units' scheduled

retirements are reflected in adjustments to the state emission budgets. This aspect of implementation of the Group 3 trading program is discussed in section VII.C.3.b.

The proposed rule included several provisions designed to address the transition from the Group 2 trading program to the Group 3 trading program. The provisions for allocation of supplemental allowances to ensure that the enhanced control stringency established in this action applies only after the rule's effective date are finalized as proposed. The provisions concerning creation of an initial bank of Group 3 allowances in exchange for banked 2017–2020 Group 2 allowances at a formula-based conversion ratio and the provisions concerning the recall of certain previously recorded 2021–2024 Group 2 allowances are finalized with certain modifications adopted after consideration of comments. Also, in response to comments, the final rule includes transitional provisions establishing a ''safety valve'' mechanism under which sources may obtain additional Group 3 allowances in exchange for additional 2017–2020 Group 2 allowances at a higher conversion ratio. All of these transitional provisions are discussed in section VII.C.4.

The only other differences between the new Group 3 trading program regulations and the Group 2 trading program regulations that applied for emissions through the 2020 control periods are a small number of corrections and administrative simplifications that have no effect on program stringency; EPA is eliminating these differences by making the same corrections and simplifications to the regulations for the Group 2 trading program and the other existing CSAPR trading programs starting with the 2021 control periods.[177] In this section, the Agency discusses major elements of the new Group 3 trading program, with emphasis on the elements that differ from the previous provisions of the Group 2 trading program as well as the provisions specifically designed to address the transition from the Group 2 trading program to the Group 3 trading program.

1. Applicability

In this rule, EPA is using the same EGU applicability provisions in the new Group 3 trading program as in the existing Group 2 trading program and the other CSAPR trading programs, without change. Under the general CSAPR applicability provisions, a covered unit is any stationary fossil-fuel-fired boiler or combustion turbine serving at any time on or after January 1, 2005, a generator with nameplate capacity exceeding 25 MW, which is producing electricity for sale, with the exception of certain cogeneration units and solid waste incineration units.

2. State Budgets, Variability Limits, Assurance Levels, and Penalties

EPA is establishing revised state budgets for EGU emissions of ozone season NO_X for the 12 ''Group 3'' states subject to new or amended FIPs in this final rule in order to fully address these states' significant contribution with respect to the 2008 ozone NAAQS. The budgets have been established according to the process described in section VII.B. As discussed in that section, for each of the covered states, separate budgets are established for the three individual years 2021, 2022, and 2023, and then for 2024 and beyond.[178] Portions of the updated NO_X ozone season emission budgets are reserved as updated new unit set-asides and Indian country new unit set-asides for the same control periods, as further described in section VII.C.3.a. The amounts of the state emissions budgets for 2021, 2022, 2023, and 2024 and beyond are shown in tables VII.C.2–1, VII.C.2–2, VII.C.2–3, and VII.C.2–4.

Similar to the previous requirements to hold Group 2 allowances sufficient to cover their NO_X emissions in each control period from 2017 through 2020, sources in states covered by the new Group 3 trading program will be required to hold new Group 3 allowances sufficient to cover their NO_X emissions in each control period in 2021 and thereafter. For Group 3 states that were found in the CSAPR Update to still have good neighbor obligations with respect to the 1997 ozone NAAQS, EPA is determining that participation of the state's EGUs in the more stringent Group 3 trading program will satisfy those obligations.[179]

In the CSAPR and the CSAPR Update, EPA developed assurance provisions, including variability limits and assurance levels (with associated compliance penalties), to ensure that each state will meet its pollution control and emission reduction obligations and to accommodate inherent year-to-year variability in state-level EGU operations. Establishing assurance levels with compliance penalties responds to the D.C. Circuit's holding in *North Carolina* requiring EPA to ensure within the context of an interstate trading program that sources in each state are required to eliminate emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state.[180]

Like the emission budgets promulgated in the CSAPR and the CSAPR Update, the revised emission budgets promulgated in this rule reflect EGU operations in an ''average year.'' However, year-to-year variability in EGU operations occurs due to the interconnected nature of the power sector, changing weather patterns, changes in electricity demand, or disruptions in electricity supply from other units or from the transmission grid. Recognizing this, the trading program provisions finalized in the CSAPR and CSAPR Update rulemakings include variability limits, which define the amount by which an individual state's emissions may exceed the level of its budget in a given year to account for variability in EGU operations. A state's budget plus its variability limit equals the state's assurance level, which acts as a cap on the state's NO_X emissions during a given control period (in this rulemaking, the relevant control period is the May–September ozone season). The new CSAPR NO_X Ozone Season Group 3 Trading Program provisions established for affected sources in the 12 states subject to the new trading program under this final rule contain equivalent assurance provisions to the prior CSAPR and CSAPR Update trading programs.

The variability limits ensure that the trading program can accommodate the inherent variability in the power sector while ensuring that each state eliminates the amount of emissions within the state, in a given control period, that must be eliminated to meet

[177] The corrections and simplifications generally apply to each of the five existing CSAPR trading programs at subparts AAAAA through EEEEE of 40 CFR part 97, and a subset also apply to the Texas SO_2 Trading Program at subpart FFFFF of 40 CFR part 97. The specific corrections and simplifications are described as applied to the new Group 3 trading program in sections VII.C.1. through VII.C.7. The same changes as applied to the existing programs are discussed in section VII.C.8.

[178] See section VII.C.4.a. for a discussion of transitional provisions included in this final rule to ensure that the increased stringency of the new emission budgets being established for the 2021 control period will apply only after the rule's effective date, even though the new Group 3 trading program will be implemented as of the start of the 2021 ozone season on May 1, 2021.

[179] Out of the 12 states included in the Group 3 trading program, Illinois, Indiana, Kentucky, and Louisiana were found in the CSAPR Update to still have good neighbor obligations with respect to the 1997 ozone NAAQS. *See* 81 FR 74509 n.21 (November 21, 2016).

[180] 531 F.3d at 908.

the statutory mandate of CAA section 110(a)(2)(D)(i)(I). Moreover, the structure of the trading program, which achieves required emission reductions through limits on the total numbers of allowances allocated, assurance provisions, and penalty mechanisms, ensures that the variability limits only allow the amount of temporal and geographic shifting of emissions that is likely to result from the inherent variability in power generation, and not from decisions to avoid or delay the optimization or installation of necessary controls.

To establish the variability limits in the CSAPR, EPA analyzed historical state-level heat input variability as a proxy for emissions variability, assuming constant emission rates. *See* 76 FR 48265. The variability limits for ozone season NO_X in both the CSAPR and the CSAPR Update were calculated as 21 percent of each state's budget, and these variability limits for the NO_X ozone season trading programs were then codified in 40 CFR 97.510 and 40 CFR 97.810, along with the respective state budgets. For this final rule, EPA is retaining variability limits for the 12 Group 3 states covered by this rule calculated as 21 percent of each state's revised budget.[181]

TABLE VII.C.2–1—CSAPR NO_X OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2021 [182]

State	Emissions budget (tons)	Variability limit (tons)	Assurance level (tons)
Illinois	9,102	1,911	11,013
Indiana	13,051	2,741	15,792
Kentucky	15,300	3,213	18,513
Louisiana	14,818	3,112	17,930
Maryland	1,499	315	1,814
Michigan	12,727	2,673	15,400
New Jersey	1,253	263	1,516
New York	3,416	717	4,133
Ohio	9,690	2,035	11,725
Pennsylvania	8,379	1,760	10,139
Virginia	4,516	948	5,464
West Virginia	13,334	2,800	16,134

TABLE VII.C.2–2—CSAPR NO_X OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2022

State	Emissions budget (tons)	Variability limit (tons)	Assurance level (tons)
Illinois	9,102	1,911	11,013
Indiana	12,582	2,642	15,224
Kentucky	14,051	2,951	17,002
Louisiana	14,818	3,112	17,930
Maryland	1,266	266	1,532
Michigan	12,290	2,581	14,871
New Jersey	1,253	263	1,516
New York	3,416	717	4,133
Ohio	9,773	2,052	11,825
Pennsylvania	8,373	1,758	10,131
Virginia	3,897	818	4,715
West Virginia	12,884	2,706	15,590

TABLE VII.C.2–3—CSAPR NO_X OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2023

State	Emissions budget (tons)	Variability limit (tons)	Assurance level (tons)
Illinois	8,179	1,718	9,897
Indiana	12,553	2,636	15,189
Kentucky	14,051	2,951	17,002
Louisiana	14,818	3,112	17,930

[181] See section VII.C.4.a. for a discussion of transitional provisions included in the final rule to ensure that the increased stringency of the new budgets will apply only after the rule's effective date, even though the new Group 3 trading program will be implemented as of the start of the 2021 ozone season on May 1, 2021. The supplemental allowances and assurance level adjustments that are being provided for the 2021 control period in accordance with those transitional provisions are not reflected in the amounts shown in Table VII.C.2–1.

[182] The state-level emission budget calculations pertaining to Tables VII.C.2–1 through VII.C.2–4 are described in section VII.B, and in greater detail in the Ozone Transport Policy Analysis Final Rule TSD. Budget calculations and underlying data are also available in Appendix A of that TSD.

TABLE VII.C.2–3—CSAPR NO_X OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2023—Continued

State	Emissions budget (tons)	Variability limit (tons)	Assurance level (tons)
Maryland	1,266	266	1,532
Michigan	9,975	2,095	12,070
New Jersey	1,253	263	1,516
New York	3,421	718	4,139
Ohio	9,773	2,052	11,825
Pennsylvania	8,373	1,758	10,131
Virginia	3,980	836	4,816
West Virginia	12,884	2,706	15,590

TABLE VII.C.2–4—CSAPR NO_X OZONE SEASON GROUP 3 STATE BUDGETS, VARIABILITY LIMITS, AND ASSURANCE LEVELS FOR 2024 AND BEYOND

State	Emissions budget (tons)	Variability limit (tons)	Assurance level (tons)
Illinois	8,059	1,692	9,751
Indiana	9,564	2,008	11,572
Kentucky	14,051	2,951	17,002
Louisiana	14,818	3,112	17,930
Maryland	1,348	283	1,631
Michigan	9,786	2,055	11,841
New Jersey	1,253	263	1,516
New York	3,403	715	4,118
Ohio	9,773	2,052	11,825
Pennsylvania	8,373	1,758	10,131
Virginia	3,663	769	4,432
West Virginia	12,884	2,706	15,590

The assurance provisions include penalties that are triggered in the event that the covered sources' emissions in a given state, as a whole, exceed the state's assurance level. The CSAPR and the CSAPR Update provided that, when the emissions from EGUs in a state exceed that state's assurance level in a given year, particular sources within that state will be assessed a 3-to-1 allowance surrender on emissions exceeding the assurance level. Specifically, each excess ton above a given state's assurance level must be met with one allowance, per standard compliance, and two additional allowances to satisfy the penalty. The penalty was designed to deter state-level emissions from exceeding assurance levels. In both the CSAPR and the CSAPR Update, the assurance provisions were designed to account for variability in the electricity sector while ensuring that the necessary emission reductions occur within each covered state, consistent with the court's holding in *North Carolina,* 531 F.3d at 908. If EGU emissions in a given state do not exceed that state's assurance level, no penalties are incurred by any source.

To assess the penalty under the assurance provisions, EPA is following the same methodology finalized in the CSAPR Update. *See* 81 FR 74567. In that methodology, EPA evaluates whether any state's total EGU emissions in a control period exceeded the state's assurance level, and if so, EPA then determines which groups of units in the state represented by a ''common designated representative'' emitted in excess of the common designated representative's share of the state assurance level and, therefore, will be subject to the allowance surrender requirement described above. Thus, penalties under the assurance provisions are triggered for the group of sources represented by a common designated representative when two conditions are met: (1) The group of sources and units with a common designated representative are located in a state where the total state EGU emissions for a control period exceed the state assurance level; and (2) that group with the common designated representative had emissions exceeding the respective common designated representative's share of the state assurance level. EPA is establishing assurance provisions for the CSAPR NO_X Ozone Season Group 3 Trading Program that are equivalent to the assurance provisions in the CSAPR NO_X Ozone Season Group 2 Trading Program.

In this final rule, EPA is simplifying the procedures for administering the assurance provisions, as compared to the analogous provisions included in the existing CSAPR trading programs for control periods before 2021.[183] The simplifications are made possible by the revisions to the process for allocating allowances from the new unit set-asides that are discussed in section VII.C.3.c. The same simplifications are also being implemented in the existing CSAPR trading programs, as discussed in section VII.C.8. These simplifications concern the procedures for determining the portion of the state's assurance level to be assigned to each common designated representative. Specifically, certain provisions of these procedures as previously implemented in the existing CSAPR trading programs were designed to address circumstances where a new unit operates but has no allowance allocation determined for it. Administration of these provisions

[183] EPA proposed and requested comment on implementing the simplified assurance provisions as of the 2023 and 2021 control periods, respectively. No comments were received, and EPA is clarifying the regulations by implementing the simplified provisions as of the 2021 control period. For further discussion, see section VII.C.8.b.

required EPA to issue a notice to collect information needed solely for this purpose that is not otherwise required to be reported to EPA. Because the revised new unit set-aside (''NUSA'') allocation procedures eliminate the possibility that a new unit would not have an allowance allocation determined for it, EPA is eliminating the provisions for issuance of the related extra notice. EPA also is extending the date as of which a common designated representative is determined under both the new Group 3 trading program and the existing CSAPR trading programs from April 1 of the year following the control period to July 1 so as to preserve the relationship of those dates to the allowance transfer deadline, which is being extended from March 1 of the year following the control period to June 1.[184] Further discussion of these changes from the current provisions in the existing trading programs is provided in section VII.C.8.

Comment: EPA received several comments concerning the achievability of state emissions budgets in 2021 that highlighted the quick implementation timeframe and suggesting that such a timeframe would not allow enough times for a liquid allowance market to form and thus inhibit sources' ability to obtain the allowances that they need for compliance.

Response: As an initial matter, EPA observes that in 25 years of promulgating and administering trading programs for NO_X and SO_2 as mechanisms to address acid precipitation or interstate transport of air pollution, the Agency has never encountered a single instance where a source was unable to comply with the requirements of any of these trading programs because of an inability to find allowances available for purchase. Almost all of the sources that will participate in the trading program established under this final rule have previously participated in some of these other trading programs and therefore are, or should be, fully aware that under every such trading program, a functioning allowance market has developed. Nevertheless, some commenters assert that in the trading program established under this specific final rule—where the emission reductions required for the first control period are set at levels designed to be achievable without installation of any new controls by any source—for the first time ever, either no industry participants will be willing to take actions that would create surplus allowances or all industry participants will refuse to sell such surplus allowances at any price. The comments fly in the face of 25 years of evidence and common experience, not to mention principles of economics and market participants' self-interest. EPA views the comments as unsupported and speculative to the point of irrationality.

EPA first addresses the viability of 2021 implementation for the emission reductions required under this rule in detail in section VI. B above. With regard to the specific market liquidity concerns expressed here, EPA notes that those same concerns have been voiced in the lead-up to past CSAPR trading programs and have never materialized. Instead, a functioning allowance market has always formed and resulted in 100 percent compliance with the allowance holding requirements for the first control period (and subsequent control periods). As described in this section, under the new trading program sources are not required to hold (and subsequently surrender) any allowances for compliance purposes until June 1, 2022—well after the end of the 2021 ozone season. In the current CSAPR Update ozone season programs, EPA observes that most trades occur near or after end of the ozone season. Therefore, the approximately two months between final rule promulgation and the start of the compliance period is in no way a limit on the time sources have to buy and sell allowances for that compliance period. Rather, sources will have eight months after the end of the control period in which to engage in any necessary or desired allowance market transactions. The total quantity of allowances usable for the 2021 control periods from state emission budgets and from the initial Group 3 bank (discussed in section VII.C.4.b) will be known before the start of the 2021 control period, and EPA expects that almost all such allowances will be recorded in sources' compliance accounts well before the end of the 2021 control period, ensuring that there will be no logistical impediments to such transactions. Moreover, in many cases, units that may have the need to procure allowances will also have associated units under common ownership elsewhere in the fleet that hold a surplus of allowances In this case, it is only a matter of intra-owner allowance movement needed to align allowancing holdings with allowance surrender obligations, and the need for accessing a broader allowance market is mooted.

Further, the level of the budgets, in addition to the initial Group 3 bank, should obviate any market liquidity concerns as the number of allowances on the market for the first year will accommodate a variety of compliance pathways and unit operational decisions. Moreover, the experience of the CSAPR programs reveals that the allowance price is highest in the first compliance period, creating an incentive for all sources to implement achievable emission reductions and for sources with surplus of allowances to sell them while allowance prices are highest, generating the conditions for a robust market to form—further promoting market liquidity. While EPA strongly disagrees, based on previous program implementation and forward-looking analysis, that there is any risk of market illiquidity, the Agency is creating an additional ''safety valve'' in this final rule due to the near-term implementation timetable. Consistent with commenters' suggestions, EPA will allow the one-time conversion of Group 2 allowances at an 18:1 ratio to provide additional assurance to sources that allowances will be available, but ensuring that the cost of this compliance option is such that entities will utilize it only in the very unlikely event that access to such additional allowances proves to be necessary. The safety valve is described further in section VII.C.4.c.

Comment: EPA received several comments concerning the proposed variability limits and associated assurance levels for the states in the Group 3 trading program. Some commenters suggested that EPA should eliminate or tighten variability limits for the Group 3 trading program. One commenter justified these changes by observing that the Group 2 trading program established under the CSAPR Update had excess availability of allowances and low allowance prices.

One commenter suggested that EPA eliminate variability limits for the Group 3 trading program on the basis that the variability limits and associated assurance levels as proposed do not result in the elimination of downwind non-attainment by the end of 2021. This commenter stated that EPA failed to provide a full explanation in the proposed action as to why the 21 percent variability limit used in the trading programs for ozone season NO_X established in the CSAPR and the CSAPR Update was still applicable in the new Group 3 trading program. The commenter stated there is no justification for EPA to increase the budget amounts due to variability in

[184] As discussed in section VII.C.8., in order to minimize unnecessary differences between the CSAPR trading programs and the similarly structured Texas SO_2 Trading Program, EPA is also revising the date for determination of a common designated representative under the Texas SO_2 Trading Program.

EGU fleet operation if EPA is correct in its assessment that the proposed NO_X mass emission budget levels are representative of near-term achievable NO_X emission control obligations based on historical EGU fleet operation. The commenter stated that increasing budgets by 21 percent to arrive at an assurance level permits an upwind state's EGU fleet to emit NO_X mass emissions more than the levels necessary to meet the given state's obligation to downwind areas. The commenter further states a belief that EPA is misapplying the concept of EGU fleet operational variability to permit a state's EGU fleet to emit NO_X mass emissions at levels that may negatively impact the health and welfare of downwind populations.

Response: EPA disagrees with the commenters and is retaining the variability limits and associated assurance levels as reflected in both the CSAPR and the CSAPR Update. EPA believes a variability limit of 21 percent continues to be appropriate for states in the Group 3 trading program. The assertion that state budgets are increased by 21 percent in response to the variability limit is incorrect. Rather, as described in the CSAPR, the CSAPR Update, and reiterated in this final action, the variability limits reflect expected year-to-year or season-to-season variability in demand for electricity, and therefore, variability in the use of fuel and in emissions. While a given state may emit up to the assurance level (*i.e.,* that state's budget plus the 21 percent variability limit) during years with adverse meteorology and atypical levels of electricity demand, allowances banked from prior control periods may then be used for compliance obligations. However, the total number of allowances issued for each control period in the Group 3 trading program is equal to the sum of the Group 3 states' emission budgets, not the sum of the Group 3 states' assurance levels. Although EPA is also creating an initial bank of allowances in an amount equal to the sum of the states' variability limits for the 2022 control period (see section VII.C.4.b), creation of the bank is a one-time event and does not represent a 21 percent increase in the state emission budgets established for each control period.

With regard to the comment that EPA has not sufficiently justified reusing in the Group 3 trading program the same 21 percent variability limits used in the trading programs for ozone season NO_X established in the CSAPR and the CSAPR Update, EPA disagrees that updating these limits is necessary. The original variability analysis performed in the CSAPR rulemaking considered data for 26 states (including all 12 Group 3 states) and reflected over a decade of operational variability (from 2000 through 2010), producing relatively robust standard deviation estimates. EPA would not necessarily view changes of a few percent above or below the previously identified variability level of 21 percent from an updated analysis as significant enough to require establishment of different variability limits in the Group 3 trading program. Nevertheless, in response to the comment, EPA has performed an updated variability analysis for the 12 Group 3 states reflecting data for all control periods from 2000 to 2019. The updated analysis again results in a variability estimate of 21 percent. EPA also considered shorter time periods for the updated analysis and found that the resulting variability estimates are not especially sensitive to the particular time period analyzed. Accordingly, EPA concludes that it is reasonable to finalize the variability limits for the Group 3 trading program at the level of 21 percent as proposed.[185]

3. Unit-Level Allocations of Emissions Allowances

For states participating in the CSAPR Group 3 trading program, EPA is issuing CSAPR NO_X Ozone Season Group 3 allowances to be used for compliance beginning with the 2021 ozone season. This section explains the default process by which EPA is allocating total amounts of these allowances equal to each state's budget amount existing units and new units in the state. Section VII.C.3.a describes the determination of the portions of each state's budget that will be set aside for potential allocation to new units in the state and in any Indian country within the state's borders. Section VII.C.3.b discusses the methodology used to allocate shares of each state's budget not reserved in a set-aside to the existing units in the state, including in some cases to units that have ceased operations. Sections VII.C.3.c and VII.C.3.d discuss the process for allocating the allowances in the new unit set-asides and Indian country new unit set-asides, respectively, to individual units.

As under both the CSAPR and the CSAPR Update, states have several options under this final rulemaking to submit SIP revisions which, if approved, may result in the replacement of EPA's default allocations with state-determined allocations for the 2022 control period and beyond. The provisions described in this section do not prevent any state from employing an alternative allocation methodology for control periods after 2021 through a SIP submission. See section VII.D. for details on the development of approvable SIP submissions.

a. Set-Asides of Portions of State Budgets for New Units

As part of the default allocation process that will apply where a state does not employ an alternative allocation process pursuant to an approved SIP revision, EPA is promulgating allocations to a new unit set-aside for each state equal to a minimum of 2 percent of the total state budget, plus the projected amount of emissions from planned units in that state. For example, if planned units in a state are projected to emit 3 percent of the state's NO_X ozone season emission budget, then the new unit set-aside for the state would be set at 5 percent, which is the sum of the minimum 2 percent set-aside plus an additional 3 percent for planned units. As further discussed in section VII.C.3.d., for the three Group 3 states with Indian country within their borders (Louisiana, Michigan, and New York), EPA is reserving 5 percent of the minimum 2 percent new unit set-aside, or 0.1 percent of the total state budget, for any new units in Indian country within the borders of state,[186] with no additional amount to address planned units in Indian country.[187] This is the same approach previously used to establish the amounts of new unit set-asides and Indian country new unit set-asides for all the CSAPR and CSAPR Update trading programs. *See, e.g.,* 76 FR 48292 (August 8, 2011). Note that New York has set its NUSA percentage within its approved SIP for the existing Group 2 trading program to 5 percent of the state emission budget without consideration of planned units; therefore, this NUSA percentage is used

[185] For details on the original variability analysis for 26 states over the 2000–2010 period, including a description of the methodology, see the Power Sector Variability Final Rule TSD from the CSAPR (EPA–HQ–OAR–2009–0491–4454). For the updated variability analysis for the 12 Group 3 states for the 2000–2019 period, see the Excel file ''Historical Variability in Heat Input 2000 to 2019.xls.'' Both documents are available in the docket for this final rule.

[186] In the CSAPR rulemaking, based on analysis of a set of states that includes all the proposed Group 3 states in this action, EPA determined that among the states analyzed, in the state for which Indian country represented the largest share of the total area within the state's borders, that share was 5 percent. *See* 76 FR 48293 (December 27, 2011). EPA adopted the same 5 percent figure in the CSAPR Update. *See* 81 FR 74565–66 (May 27, 2016).

[187] According to the information available to EPA, there are currently no planned units in Indian country within the borders of any Group 3 state.

for New York. As described in greater detail in sections VII.C.3.c and VII.C.3.d, new units are eligible to receive allocations from a new unit set-aside or Indian country new unit set-aside starting with the first year they are subject to the allowance-holding requirements of this rule. If the allowances in the NUSA for a state or the Indian country NUSA for Indian country within the borders of a state are not allocated to new units, the allowances are redistributed to existing units in the state before each compliance deadline.

The process described above for determining the portions of each state budget that will be set aside for potential allocation to new units is unchanged from the process described in the proposed rule. EPA received no comments concerning the portions of the emission budgets established under the new Group 3 trading program that would be set aside for this purpose. One commenter suggested that the amounts of the new unit set-asides should be increased by adding allowances from the existing Group 2 trading program that would have been allocated to retired units under that program. EPA is not implementing this suggestion and responds more fully to the comment in section VII.C.4.b.

Because the budgets under the Group 3 trading program vary across control periods, the amounts of the default new unit set-asides and Indian country new unit set-asides also vary. The amounts for each state for 2021 through 2023 and for 2024 and beyond are set forth in tables VII.C.3–1 through VII.C.3–4.[188]

TABLE VII.C.3–1—CSAPR NO_X OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR 2021

State	Emission budgets (tons)	New unit set-aside amount (percent)	Total new unit set-aside amount for new units (tons)	New unit set-aside amount for new units not in Indian country (tons)	Indian country new unit set-aside amount (tons)
Illinois	9,102	3	265	265	
Indiana	13,051	2	262	262	
Kentucky	15,300	2	309	309	
Louisiana	14,818	3	445	430	15
Maryland	1,499	9	135	135	
Michigan	12,727	4	513	500	13
New Jersey	1,253	2	27	27	
New York	3,416	5	171	168	3
Ohio	9,690	3	291	291	
Pennsylvania	8,379	4	335	335	
Virginia	4,516	4	185	185	
West Virginia	13,334	2	266	266	

TABLE VII.C.3–2—CSAPR NO_X OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR 2022

State	Emission budgets (tons)	New unit set-aside amount (percent)	Total new unit set-aside amount for new units (tons)	New unit set-aside amount for new units not in Indian country (tons)	Indian country new unit set-aside amount (tons)
Illinois	9,102	3	265	265	
Indiana	12,582	2	254	254	
Kentucky	14,051	2	283	283	
Louisiana	14,818	3	445	430	15
Maryland	1,266	9	115	115	
Michigan	12,290	4	494	482	12
New Jersey	1,253	2	27	27	
New York	3,416	5	171	168	3
Ohio	9,773	3	290	290	
Pennsylvania	8,373	4	339	339	
Virginia	3,897	4	161	161	
West Virginia	12,884	2	261	261	

[188] See section VII.C.4.a. for a discussion of transitional provisions included in the final rule to ensure that the increased stringency of the new budgets will apply only after the rule's effective date, even though the new Group 3 trading program will be implemented as of the start of the 2021 ozone season on May 1, 2021. The supplemental allowances that are being provided for the 2021 control period in accordance with those transitional provisions are not reflected in the emission budget amounts shown in Table VII.C.3–1.

TABLE VII.C.3–3—CSAPR NO_X OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR 2023

State	Emission budgets (tons)	New unit set-aside amount (percent)	Total new unit set-aside amount for new units (tons)	New unit set-aside amount for new units not in Indian country (tons)	Indian country new unit set-aside amount (tons)
Illinois	8,179	3	248	248	.....
Indiana	12,553	2	249	249	.....
Kentucky	14,051	2	283	283	.....
Louisiana	14,818	3	445	430	15
Maryland	1,266	9	115	115	.....
Michigan	9,975	4	398	388	10
New Jersey	1,253	2	27	27	.....
New York	3,421	5	171	168	3
Ohio	9,773	3	290	290	.....
Pennsylvania	8,373	4	339	339	.....
Virginia	3,980	4	166	166	.....
West Virginia	12,884	2	261	261	.....

TABLE VII.C.3–4—CSAPR NO_X OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR 2024 AND BEYOND

State	Emission budgets (tons)	New unit set-aside amount (percent)	Total new unit set-aside amount for new units (tons)	New unit set-aside amount for new units not in Indian country (tons)	Indian country new unit set-aside amount (tons)
Illinois	8,059	3	244	244	.....
Indiana	9,564	2	190	190	.....
Kentucky	14,051	2	283	283	.....
Louisiana	14,818	3	445	430	15
Maryland	1,348	9	122	122	.....
Michigan	9,786	4	392	382	10
New Jersey	1,253	2	27	27	.....
New York	3,403	5	170	167	3
Ohio	9,773	3	290	290	.....
Pennsylvania	8,373	4	339	339	.....
Virginia	3,663	4	150	150	.....
West Virginia	12,884	2	261	261	.....

b. Allocations to Existing Units, Including Units That Cease Operation

The portion of a state budget remaining after the portions reserved for new units have been set aside is allocated among the existing units in the state. EPA in this action is generally allocating allowances to existing units in the Group 3 states following the same methodology for allowance allocation that was used in the CSAPR Update, which relies on historical heat input data and historical emissions data for each eligible existing unit in the state. *See* 81 FR 74564–65. For the new Group 3 trading program, EPA is applying this methodology using historical data through 2019. In response to comments, EPA is also making one change to the approach used to determine which existing units are eligible to receive allocations for a given control period, specifically by excluding certain units with scheduled future retirements from receiving allocations for control periods after the years in which the scheduled retirements are reflected in adjustments to the respective states' emission budgets. For the amounts of the allocations to existing units, see the TSD ''Unit Level Allocations and Underlying Data for the Revised CSAPR Update for the 2008 Ozone NAAQS,'' in the docket for this final rule. Note that this final rule addresses allocations of only the newly created CSAPR NO_X Ozone Season Group 3 allowances issued under and used for compliance in the Group 3 trading program. EPA is not changing allocations of allowances used in the CSAPR NO_X Ozone Season Group 1 or Group 2, NO_X Annual, or SO_2 Group 1 or Group 2 trading programs and is not reopening the previously established default allocations under these programs.

For the purpose of allocations, the CSAPR considered an ''existing unit'' to be a unit that commenced commercial operation prior to January 1, 2010, and the CSAPR Update considered an ''existing unit'' to be a unit that commenced commercial operation prior to January 1, 2015. For the 12 states subject to new or amended FIPs in this rulemaking, EPA is considering an ''existing unit'' for purposes of the Group 3 trading program to be a unit that commenced commercial operation prior to January 1, 2019 (although only existing units that did not cease operation before January 1, 2021 will be eligible to receive allocations of Group 3 allowances as existing units). This change will allow units commencing commercial operation between 2015 and 2019 to be directly allocated allowances from each state's budget as existing units and will allow the full amounts of the new unit set-asides and Indian country new unit set-asides to be available for any future new units

locating in covered states or Indian country. Using data available at the time of the proposed rule's development, EPA identified which units in the proposed Group 3 states that currently submit quarterly emissions reports to EPA appear to be eligible or ineligible to receive allowance allocations as existing units;[189] for this final rule, EPA has updated the lists of units with the most recent data. EPA is not reconsidering which units are ''existing units'' for purposes of any other CSAPR trading program. Sources in most of the Group 3 states also participate in the CSAPR NO_X Annual and SO_2 Group 1 trading programs, for which an ''existing unit'' is a unit that commenced commercial operation before January 1, 2010. Thus, a unit that is located in one of these states and that commenced commercial operation between January 1, 2010, and January 1, 2019, would be considered an ''existing unit'' for purposes of default allowance allocations under the Group 3 trading program but would continue to be considered a ''new unit'' for purposes of default allowance allocations under the CSAPR NO_X Annual and SO_2 Group 1 trading programs.

As noted earlier in this section, in response to comments EPA is finalizing a change from the allocation methodology used in the existing CSAPR trading programs with respect to which existing units are eligible to receive allocations from the budget for a given control period following retirement. Specifically, in cases where, before finalization of this rule, a unit was scheduled to retire with sufficient certainty for the retirement to be taken into account in EPA's process in this rule for setting the emission budgets for the state where the unit is located, EPA is not providing allocations of allowances to the unit as an existing unit from the budget for any control period starting with the first control period for which the state's emission budget has been adjusted to reflect the unit's scheduled retirement. This approach to determining eligibility to receive allocations as an existing unit does not apply to other units that may cease operations but whose upcoming retirements were not scheduled as of finalization of this action with sufficient certainty to be reflected in the process for setting the emission budgets. These other units would continue to receive allowance allocations as existing units for five control periods of non-operation, consistent with the allocation methodology used in the existing CSAPR trading programs. EPA provides additional discussion of these aspects of the allocation methodology in the responses to comments at the end of this section. The criteria that EPA has applied to determine whether a unit's scheduled retirement is sufficiently certain to serve as a basis for adjusting emission budgets and unit-level allocations are discussed in section VII.B and in the Ozone Transport Policy Analysis Final Rule TSD.

EPA is applying the default methodology finalized in the CSAPR Update for allocating emission allowances to existing units, updated to use more recent historical data. This methodology allocates allowances to each unit based on the unit's share of the state's heat input, limited by the unit's maximum historical emissions. As discussed in the CSAPR Update, *see* 81 FR 74563–65, EPA finds this allowance allocation approach to be fuel-neutral, control-neutral, transparent, based on reliable data, and similar to allocation methodologies previously used in the CSAPR, the NO_X SIP Call, and the Acid Rain Program.[190] EPA is therefore continuing the application of this default methodology for allocating allowances to existing sources in this final rule.

This final rule uses the average of the three highest years of heat input data out of the most recent five-year period that is considered representative to establish the heat input baseline for each unit.[191] These heat input data are used to calculate each unit's proportion of state-level heat input (the average of the unit's three highest non-zero years of heat input divided by the total of such averages for all eligible units within the given state). In general, EPA applies this proportion to the total amount of existing unit allowances to be allocated to quantify unit-level allocations. However, EPA also constrains each unit's allocation so as not to exceed the unit's maximum historical baseline emissions, calculated as the highest year of emissions out of the most recent eight-year period that is considered representative.[192] In other words, if the allocation that a unit would receive from the emission budget for its state based solely on consideration of the unit's share of the state-level heat input exceeds that unit's maximum historical baseline emissions, the unit's allocation is capped at its maximum historical baseline emissions and the excess allowances are instead allocated to other units in the state whose allocations do not exceed their respective maximum historical baseline emissions, again in proportion to those other units' shares of the state-level heat input. Like the proposed rule, this final rulemaking uses 2015–2019 heat input data and 2012–2019 emissions data for purposes of computing unit-level allocations. Although EPA proposed to update the data used in this action to include 2016–2020 heat input data and 2013–2020 emission data, most comments received on this topic opposed the use of 2020 data as potentially unrepresentative because of changes in economic conditions related to the COVID–19 pandemic. EPA is persuaded that in the unusual circumstance of the pandemic, 2020 data have the potential to be less representative for at least some units than data from earlier control periods, and accordingly EPA is not updating the periods of the data used in the allocation calculations for the final rule to include 2020 data.

Under the CSAPR Update, if, at the time the rule was finalized, a state had already submitted a SIP revision addressing the allocation of CSAPR NO_X ozone season allowances among the units in the state, and if the SIP submission's allocation provisions could be applied to an updated budget, EPA applied the state's preferred allocation methodology to determine the allocation of allowances among that state's units under the final CSAPR Update. Two of the Group 3 states (Indiana and New York) have such methodologies for allocating CSAPR NO_X Ozone Season Group 2 allowances among their units. As under the CSAPR Update, in this final rule EPA is carrying out the intent of these SIPs by establishing initial allowance allocations to existing units under the FIPs for these two states using the allocation methodologies already adopted by the states. EPA received no comments opposing this approach to establishing the default allocation methodologies for these states. EPA

[189] *See* ''CSAPR NO_X OS Group 3—Unit Level Allocations and Underlying Data.xls'', available in the docket.

[190] *See* 40 CFR parts 72–78.

[191] As described in the Unit Level Allowance Allocations TSD and done in prior CSAPR actions, the allocation method uses a five-year baseline in order to improve representation of a unit's normal operating conditions. Using the three highest, non-zero ozone season heat input values within the five-year baseline reduces the likelihood that any particular single year's operations (which might not be representative due to outages or other unusual events) determine a unit's allocation.

[192] EPA's allocation methodology also considers whether unit-level allocations should be limited because they would otherwise exceed emission levels that are permissible under the terms of consent decrees. However, in this instance EPA's analysis indicates that consideration of consent decree limits does not alter the unit-level allocations.

notes that, consistent with the approach taken for other states, when applying these states' allocation methodologies, the set of units deemed eligible to receive allocations for each control period as existing units is updated to eliminate any units whose scheduled retirements were considered sufficiently certain to be reflected in the budget-setting process with respect to that control period.

Comment: EPA received a comment suggesting modifications to the proposed methodology for calculating allowance allocations in the event that a unit has fewer than three years of operating history for use in calculating allocations. The commenter suggests that EPA either revise the allocation methodology for existing units so as to recompute existing unit-level allocations for each ozone season through 2024 to take account of additional years of heat input data for units in this situation or else allow units in this situation to receive allocations from new unit set-asides to the extent that their allocations as existing units are less than their actual emissions.

Response: EPA disagrees that the revisions to the allocation approach suggested by the commenter are needed in order to effectuate a reasonable allocation of allowances among all of the units in a given state. The suggested revisions would require promulgating new allocation methodologies for either all existing units or all new units that would differ from the allocation methodologies used in all of the existing CSAPR trading programs and that would change the allocation to the commenter's unit by at most one allowance for the 2021 control period. EPA notes that any state may submit SIP revisions to replace EPA's default allocations with state-determined allocations if the state would prefer that allowances be allocated differently among the state's units.

Comment: Commenters expressed diverse views on questions concerning allocations of allowances to units with unscheduled future retirements, ranging from recommendations that EPA end such allocations immediately upon a unit's retirement to recommendations that EPA continue allocations to retired units indefinitely.

Response: With respect to units with unscheduled future retirements, EPA proposed to provide allocations of allowances according to the methodology used in the existing CSAPR trading programs. Under this methodology, when a unit ceases operation for two consecutive control periods, it continues to receive allocations for five control periods starting with the first control period of non-operation. After the fifth control period, allowances that would otherwise have been allocated to the unit for future control periods are instead directed to the state's new unit set-aside for each control period, and if the unit happens to resume operation in a future control period, it is eligible to receive allocations only as a ''new'' unit from the new unit set-aside for that control period. The rationale for continuing to make allocations to sources that have ceased operations for five control periods, rather than ending allocations immediately or extending the allocations indefinitely, is to balance two concerns. The first concern, which tends to suggest reallocating allowances more quickly, is to ensure that allowances are available for new units as the generating fleet evolves. The second concern, which tends to suggest reallocating allowances less quickly, is to ensure that the program's allowance allocation provisions do not distort a unit owner's incentives to pursue what would otherwise be the most economic compliance strategy. Such distortion could occur if a predicted immediate loss of allowance allocations upon closure would give the owner of an otherwise uneconomic unit an incentive to keep the unit in operation just to receive allowance allocations.

None of the comments recommending a change to the approach for allocating allowances to units with unscheduled future retirements advocate allocating the allowances to other units instead. Rather, all of these comments appear to either explicitly or implicitly incorporate an assumption that the recommended change in allocations to the units with unscheduled future retirements would be accompanied by a corresponding change in the total number of allowances made available collectively to all units in the state under the Group 3 trading program. In other words, the comments recommending earlier discontinuation of allocations to retired units are actually advocating for reduced emission budgets implemented through the mechanism of reduced allocations to retired units, while the comments recommending more extended allocations to retired units are actually advocating for increased emission budgets implemented through the mechanism of increased allocations to retired units. EPA was unable to identify any comments advocating for changes in the methodology establishing the allocations to units with unscheduled retirements that were not effectively comments advocating for changes in the amounts of the emission budgets, which EPA considers a different issue. Comments on the amounts of the emission budgets are addressed elsewhere.

Comment: EPA received several comments regarding the question of when to treat a unit with an unscheduled future retirement as retired for purposes of triggering the count of the five control periods for which the unit would continue to receive allocations. One comment suggested that EPA begin counting the five control periods following the unit's announced retirement date rather than when the unit has ceased operating for two consecutive control periods. Other comments suggested that EPA evaluate non-operation on the basis of full calendar years rather than on the basis of control periods (*i.e.,* the ozone season portions of calendar years).

Response: EPA disagrees with these comments. With respect to the suggestion to wait for a retirement announcement even if a unit has ceased operation for two control periods, EPA sees no reason to also wait for a retirement announcement before taking observed information about a unit's actual non-operation into account for purposes of determining allowance allocations. With respect to the suggestion that EPA evaluate non-operation over full calendar years instead of control periods, EPA has followed the approach of considering a unit's non-operation during the relevant control period for each trading program—in other words, the calendar year for annual programs and the ozone season for seasonal NO_X programs—in all of the existing CSAPR trading programs since 2015 without encountering any problems. Commenters have not identified any new issues with the existing procedures that would justify establishing different procedures for the new Group 3 trading program. The example cited by commenters where a unit might operate during the non-ozone season portion but not the ozone season portion of two consecutive calendar years is neither a new issue nor a significant problem. If such a unit loses its allocation as an existing unit but then operates in a subsequent ozone season, under the Group 3 trading program (as under the other seasonal NO_X trading programs) the unit becomes eligible to receive allocations from the new unit set-aside.

Comment: EPA received several comments concerning units that have already retired. Some commenters recommended that these units should receive allocations under the Group 3 trading program at least until the units

had received allocations for a total of five years of operation under the current Group 2 trading program and the new Group 3 trading program, generally citing the rationale described above for why EPA continues to provide allocations for a limited amount of time in the case of units with unscheduled future retirements.

Response: EPA disagrees with these comments. With respect to units that permanently retired before January 1, 2021, EPA will not provide allocations of Group 3 allowances. As noted above, the reason that the existing CSAPR trading programs have provided allowances to units for a period of time following their retirement is to avoid a distortion that immediate discontinuation of allocations otherwise could cause to the owner's incentives in making decisions about the unit's future. Where a unit's owners have already retired a unit, this reason for continuing allowance allocations for some period after retirement no longer applies. Thus, including a provision in the new Group 3 trading program that would allocate allowances to past retirements would simply redistribute allowances from operating units to retired units for no useful purpose. EPA again notes that any state may submit SIP revisions to replace EPA's default allocations with state-determined allocations if the state would prefer that allowances be allocated differently among the state's units.

Comment: Another commenter on units that have already retired recommended not only that the units continue to receive allocations for a combined five-year period under the Group 2 and Group 3 trading programs but also that after the end of the five-year period EPA should add an equivalent quantity of allowances to the states' new unit set-asides to ensure that sufficient allowances are available for new units.

Response: EPA disagrees with this additional recommendation. As discussed above with respect to the comments received on the methodology for allocating allowances to units with unscheduled future retirements, the recommendation to add allowances to the new unit set-asides is effectively a comment on the amounts of the emission budgets rather than on the allocation methodology, and comments on the amounts of the emission budgets are addressed elsewhere. EPA notes that the process for setting the emission budgets already includes a procedure to ensure that the emission budgets account for estimated emissions from planned new units.

Comment: With respect to units with scheduled future retirements, in the proposed rule EPA proposed to treat the units identically to units with unscheduled future retirements, allocating allowances to these units for five years starting with their first year of non-operation. Commenters observed that EPA was proposing to account for units with scheduled future retirements by reducing emission budgets in the control periods immediately following the retirements and suggested that it would be inconsistent for EPA to treat these units differently for purposes of the budget-setting process and the unit-level allocation process. The commenters implied that allowance markets might not be sufficiently liquid to facilitate the transfer of allowances from retired units to units that continue to operate, and suggested that the reductions in allocations to the operating units caused by the reductions in the overall emission budgets would constitute an increase in program stringency for the operating units.

Response: EPA disagrees with commenters' implicit assumption that allowance markets will be illiquid and with the suggestion that changes in how allowances are allocated among operating and retired units, as opposed to changes in state emission budgets, represent changes in overall program stringency. However, EPA agrees that it is reasonable to treat the units with scheduled future retirements more consistently across the budget-setting and unit-level allocation processes. Accordingly, in the final action, EPA is accounting for units with scheduled future retirements not only by reducing emission budgets in the control periods immediately following the retirements but also by ending allocations to those retired units in the control periods immediately following the retirements. Just as units that have already retired before 2021 are not included in the set of existing units to which allowances are allocated for 2021 under EPA's default methodology, in the final rule units with scheduled retirements before 2022, 2023, and 2024 are not included in the sets of existing units to which allowances are allocated for 2022, 2023, and 2024, respectively. As with EPA's rationale for not allocating allowances to units that have already retired, allocating allowances to a unit for control periods after the control period in which the unit is already scheduled to retire serves no useful purpose, because in such circumstances there is no potential distortion of economic incentives that needs to be considered. The effect of this change in the final rule is to ensure that allocations to a state's units that continue to operate do not change from control period to control period based solely on the retirements of other units in the state, where those retirements are known and already factored into the budgets. EPA notes that in the unlikely event that one of these retiring units operates in a control period after the control period in which it was scheduled to retire, it would be eligible to receive an allocation of allowances as a ''new'' unit from the state's new unit set-aside for the control period.

Finally, EPA notes that because this change addresses scheduled future retirements occurring in 2021, 2022, and 2023 that are first reflected in the state emission budgets for the 2022, 2023, and 2024 control periods, respectively, the change first affects unit-level allocations as of the 2022 control period. Under this final rule, every Group 3 state has the ability to establish state-determined unit-level allocations to replace EPA's default unit-level allocations through SIP revisions for any control period after 2021. Thus, any state that that would prefer to allocate allowances for control periods after 2021 to units with scheduled future retirements has the ability to do so through SIP revisions.

c. Allocations to New Units

Consistent with the updates to which units are considered to be ''existing units'' described in section VII.C.3.b, for purposes of this final rule a ''new unit'' that is eligible to receive allocations from the new unit set-aside (NUSA) for a state includes any covered unit that commences commercial operation on or after January 1, 2019, as well as a unit that becomes covered by meeting applicability criteria subsequent to January 1, 2019; a unit that relocates to a different state covered by a FIP promulgated by this rule; and an ''existing'' covered unit that loses its allocation as an existing unit due to a scheduled retirement or by otherwise ceasing operation but that resumes operation at some point thereafter. The amounts of allowances initially placed in each new unit set-aside for potential allocation to new units are determined as described in section VII.C.3.a. In addition, any allowances that would otherwise have been allocated to a unit with an unscheduled future retirement that is no longer eligible to receive allocations as an existing unit are redirected to the new unit set-aside for the state in which the unit is located. Units qualifying to receive allocations from a new unit set-aside may receive such allocations starting with the first

year they are subject to the allowance-holding requirements of the rule. If the allowances in the NUSA for a given state are not allocated to new units, the allowances are redistributed to the existing units in the state before each compliance deadline.

In the final rule, under the new Group 3 trading program EPA will allocate allowances from each new unit set-aside using a one-round approach that will be carried out after the end of the control period at issue. Under the one-round approach, any eligible units in the state that operated during the control period will be allocated allowances in proportion to their respective emissions during the control period, up to the amounts of those emissions if the NUSA contains sufficient allowances, and not exceeding those emissions. Any allowances remaining in a new unit set-aside after the allocations to new units will be reallocated to the existing units in the state. EPA will issue a notice of data availability concerning the proposed allocations by March 1 following the control period, provide an opportunity for submission of objections, and issue a final notice of data availability and record the allocations by May 1 following the control period, one month before the June 1 compliance deadline. EPA believes this one-round approach for allocating allowances from each state's NUSA to eligible units is both simpler and more equitable that the two-round approach that EPA historically used in all the previous CSAPR trading programs. The existing CSAPR trading programs are being amended to also adopt the one-round approach starting with the 2021 control periods. The differences between the two-round and one-round procedures and reasons for adopting the revisions are discussed in section VII.C.8.b.[193]

Comment: EPA received comments concerning allocation of the portions of new unit set-asides composed of allowances redirected to the new unit set-asides from existing units that have retired and lost their allocations. Some commenters suggested that while EPA should make these allowances available to new units, EPA should not reallocate these allowances to existing units after the completion of allocations to eligible new units, or should reallocate allowances only where the existing units demonstrated emission rates at or below the levels EPA used in setting the state budgets. Other commenters supported the proposed approach of reallocating the allowances to existing units, as provided under the existing CSAPR trading programs.

Response: After consideration of the comments, EPA is finalizing the provisions that allow all allowances in the new unit set-asides, including allowances redirected from retired units, to be reallocated to existing units. As with many of the comments received concerning allocations to existing units, these comments are effectively advocating for reductions in the overall emission budgets through the mechanism of reduced allocations to certain units. In the final rule, this issue applies only the allowances no longer allocated to units with unscheduled future retirements, because the allowances formerly allocated to units with scheduled future retirements will be removed from the budgets for control periods after the scheduled retirements instead of being added to the new unit set-asides for the future control periods. EPA has not included a mechanism in this rule to adjust the emission budgets over time to account for either units with unscheduled future retirements or the construction of unplanned new units and is not prepared at this time to reduce the budgets for units with unscheduled future retirements without consideration of whether and how to increase the budgets for the construction of unplanned new units. Although EPA has determined that it is reasonable in this rule to reduce the emission budgets over time to account for units with scheduled future retirements, this is in part because EPA's budget-setting process also accounts for the construction of planned new units over time.

d. Allocations to New Units in Indian Country

Clean Air Act programs in Indian reservations and other areas of Indian country over which a tribe or EPA has demonstrated that a tribe has jurisdiction generally may be implemented either by a tribe through an EPA-approved tribal implementation plan (TIP) or by EPA through a FIP. Tribes may, but are not required to, submit TIPs. Under EPA's Tribal Authority Rule (TAR), 40 CFR 49.1–49.11, EPA is authorized to promulgate FIPs for sources in Indian country as necessary or appropriate to protect air quality if a tribe does not submit and receive EPA approval of a TIP. *See* 40 CFR 49.11(a); *see also* 42 U.S.C. 7601(d)(4). To date, no tribes have sought approval of a TIP implementing the good neighbor provision at CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. EPA has therefore determined that it is necessary and appropriate for EPA to implement the FIPs in any affected Indian reservations or other areas of Indian country over which a tribe has jurisdiction. However, there are no existing units that would qualify as ''covered units'' in Indian country located in the Group 3 states under this final rule.

EPA is generally applying the CSAPR Update approach for allocating allowances to any new units located in Indian country, with parallel modifications to those described above with respect to unit-level allocations from the new unit set-asides for units not in Indian country. Under this approach, allowances to possible future new units located in Indian Country will be allocated by EPA from an Indian country new unit set-aside established for the Indian country (if any) within each state's borders. The amounts of allowances initially placed in each Indian country new unit set-aside for potential allocation to new units are determined as described in section VII.C.3.a. Because states generally have no SIP authority in these areas, EPA will continue to administer the allocation of allowances to any sources that locate in such areas of Indian country within a state's borders over which a tribe or EPA has demonstrated that a tribe has jurisdiction, even if the state submits a SIP to replace the applicable FIP for the sources in the state.

EPA will allocate allowances from each Indian country new unit set-aside using a one-round approach that will be carried out after the end of the control period at issue. Under the one-round approach, any eligible units in the area of Indian country that operated during the control period will be allocated allowances in proportion to their respective emissions during the control period, up to the amounts of those emissions if the Indian country NUSA contains sufficient allowances, and not exceeding those emissions. Unallocated allowances from the Indian country new unit set-aside for Indian country within a particular state's borders will be returned to the state's new unit set-aside and allocated according to the methodology for that new unit set-aside. EPA believes this one-round approach for allocating allowances from each Indian country NUSA to eligible units is both simpler and more equitable than the two-round approach that EPA historically used in all the previous CSAPR trading programs. The existing CSAPR trading programs are being

[193] EPA proposed and requested comment on implementing the simplified NUSA allocation procedure as of the 2023 and 2021 control periods, respectively. No comments were received, and EPA is clarifying the regulations by implementing the simplified procedure as of the 2021 control period. For further discussion, see section VII.C.8.b.

amended to also adopt the one-round approach starting with the 2021 control periods. The differences between the two-round and one-round procedures and reasons for adopting the revisions are discussed in section VII.C.8.b.[194]

Comment: Some commenters suggested alternatives to the provisions concerning the Indian country new unit set-asides. These commenters suggested that EPA should consolidate all allowances held back from all state budgets for potential new sources in Indian country into a single newly-created new unit set-aside for all Indian country within the borders of all states covered by the new Group 3 trading program in order to provide a clearer separation between state and tribal jurisdictions. The commenters further suggested that if any allowances in the consolidated Indian country set-aside are not allocated to new units, the allowances either should be retired or should be sold, with the sale proceeds dedicated to tribes through grant programs.

Response: EPA disagrees with these comments. There are no existing EGUs in Indian country within the borders of any state covered by the Group 3 trading program. All of the allowances being held back for potential allocation to new units in Indian country are being held back from state emission budgets. These budgets were determined based on the projected emissions of the existing units in the states after accounting for emission reductions achievable through implementation of the selected control strategy (with adjustments for known changes to the fleet of units such as scheduled future retirements of existing units and construction of planned new units). Because the allowances added to the Indian country new unit set-asides are being held back from the overall state budget amounts that would otherwise be allocated among each state's existing units, EPA believes the most reasonable disposition for these allowances if they are not allocated to potential new units in Indian country is to return them to the states from whose emission budgets the allowances were held back, after which the allowances can be redistributed in accordance with the procedures used to allocate the remainder of those states' budgets.

With respect to maintaining separation between state and tribal jurisdictions, EPA believes that the regulations for the new Group 3 trading program already maintain a clear separation between the new unit set-asides for each state and the Indian country new unit set-asides for Indian country within the borders of certain states, with the consequence that no greater clarity of separation would be achieved by consolidating the various Indian country new unit set-asides established under the new trading program into a single new unit set-aside for all Indian country within the borders of all states covered by the Group 3 trading program. Further, EPA believes such an approach would be likely to cause confusion because it would differ from the established approach already being implemented in all the existing CSAPR trading programs, where a separate Indian country new unit set-aside is established for any Indian country within the borders of any individual state covered by the trading program.

4. Transitioning From Existing CSAPR NO_X Ozone Season Group 2 Trading Program

This section discusses four sets of provisions that EPA is implementing in order to address the transition of sources from the Group 2 trading program to the Group 3 trading program. First, to address the fact that the effective date for the final action in this rulemaking will fall after the start of the ozone season on May 1, 2021, and to ensure that under these circumstances the Group 3 trading program can be implemented for the full May–September ozone season in 2021 without imposing retroactive emission reduction requirements, EPA will allocate additional allowances, and make corresponding adjustments to states' 2021 assurance levels, so as to offset the otherwise applicable emission reduction requirements under this rulemaking for the portion of the 2021 ozone season occurring before the final rule's effective date. Second, in order to facilitate the continued use of market-based trading programs as the compliance mechanism for sources covered by this action while ensuring an appropriate level of stringency in the Group 3 trading program, EPA is implementing a process by which an initial bank of CSAPR NO_X Ozone Season Group 3 allowances will be created through the conversion of certain banked CSAPR NO_X Ozone Season Group 2 allowances allocated for the control periods in 2017 through 2020. Third, to provide additional compliance flexibility in extreme circumstances, EPA is creating a safety valve mechanism that would allow Group 3 sources to exchange additional 2017–2020 Group 2 allowances for Group 3 allowances at a higher conversion ratio. Finally, to maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program, CSAPR NO_X Ozone Season Group 2 allowances equivalent in amount and usability to the vintage year 2021–2024 CSAPR NO_X Ozone Season Group 2 allowances previously recorded in the compliance accounts for sources in the new Group 3 region are being recalled.

a. Supplemental Allowance Allocations To Avoid Retroactive Emission Reduction Requirements

Although EPA anticipates that this final rule will be published in the **Federal Register** by early April 2021, before the start of the 2021 ozone season on May 1, 2021, the effective date of the rule will fall after May 1, 2021 because of the requirements of the Congressional Review Act (CRA), 5 U.S.C. 801–808. Under CRA section 801(a)(3), a ''major rule,'' as defined under the CRA, generally may not take effect sooner than 60 days after the date of publication in the **Federal Register** (or, if later, 60 days after the date on which Congress receives a report on the final rule from EPA). Under CRA section 804(2), a ''major rule'' includes any rule that the Office of Management and Budget (OMB) finds is ''economically significant'' under Executive Order 12866, that is, a rule likely to result in an annual effect on the economy of $100 million or more. Because this rule is projected to result in annualized benefits greater than $100 million per year, as discussed in section VIII of the preamble, OMB has found that the rule is ''economically significant.'' It is thus a ''major rule'' for CRA purposes, with the result that the rule's effective date will occur after the start of the 2021 ozone season.

EPA finds that, notwithstanding that the final rule's effective date will be after May 1, 2021, it will nevertheless serve the public interest and greatly aid in administrative efficiency for most elements of the Group 3 trading program—specifically, all elements of the trading program other than the elements designed to establish more stringent emissions limitations for the sources in Group 3 states—to start on May 1, 2021. This will facilitate implementation of the Group 3 trading program in an orderly manner for the entire 2021 ozone season and reduce compliance burdens and potential confusion. Each of the CSAPR trading programs for ozone season NO_X is

[194] EPA proposed and requested comment on implementing the simplified NUSA allocation procedure as of the 2023 and 2021 control periods, respectively. No comments were received, and EPA is clarifying the regulations by implementing the simplified procedure as of the 2021 control period. For further discussion, see section VII.C.8.b.

designed to be implemented over an entire ozone season. Implementing the transition from the Group 2 trading program to the Group 3 trading program in a manner that required the covered sources to participate in the Group 2 trading program for part of the 2021 ozone season and the Group 3 trading program for the remainder of that ozone season would be complex and burdensome for sources. Attempting to address the issue by splitting the Group 2 and Group 3 requirements into separate years is not a viable approach, because EPA has no legal basis for releasing the Group 3 sources from the emission reduction requirements found to be necessary in the CSAPR Update for a portion of the 2021 ozone season, and EPA similarly has no legal basis for deferring implementation of the 2021 emission reduction requirements found to be necessary under this rule until 2022. Moreover, the requirements of the Group 2 trading program and the Group 3 trading program are substantively identical as to almost all provisions, such that with respect to those provisions, a source will not need to alter its operations in any manner or face different compliance obligations as a consequence of a transition from the Group 2 trading program to the Group 3 trading program. Thus, EPA believes that no substantive concerns regarding retroactivity arise from implementing the Group 3 trading program starting on May 1, 2021, so long as those aspects of the Group 3 trading program that *do* meaningfully differ from the analogous aspects of the Group 2 trading program—that is, the relative stringencies of the two trading programs, as reflected in the emissions budgets and associated assurance levels—are applied only as of the effective date of the final rule.

Thus, with respect to two aspects of the final rule, EPA is making the following adjustments in 2021 ozone season obligations in order to ensure that no new requirements are imposed on any regulated parties prior to the effective date of the final rule.

To cause the more stringent budgets of the Group 3 trading program to apply only after the effective date of the final rule, EPA will make supplemental allocations of Group 3 allowances to Group 3 sources for the portion of the 2021 ozone season occurring before the effective date of the final rule. The total amounts of the supplemental allowances available for allocation to the sources in each state will be calculated by multiplying the difference between the state's Group 2 and Group 3 budgets by the fraction of the 2021 ozone season, measured in days, occurring before the final rule's effective date. The state's total amount of supplemental allowances will then be allocated among the state's existing units as if the supplemental allowances had been included in the state's 2021 emissions budget for the Group 3 trading program. The allocations of supplemental allowances will be recorded at the same time as the allocations from the budget.

To cause the more stringent assurance levels of the Group 3 trading program to apply only after the effective date of the final rule, EPA will include an increment in each state's assurance level for 2021 in addition to the state's emissions budget and variability limit for 2021. The amount of the increment will be computed as 1.21 times the total amount of supplemental allowances determined for the state as described above, where 1.21 is the ratio of the Group 2 state assurance levels to the Group 2 state budgets and is also the ratio of the Group 3 state assurance levels to the Group 3 state budgets. In the event of an exceedance of a state's assurance level, the allocations of supplemental allowances and the increment to the state's variability limit will also be taken into account for purposes of the calculations used to apportion responsibility for any exceedance of a state's assurance level among the owners and operators of the state's sources.

In all respects other than the allocation of supplemental Group 3 allowances and the addition of an increment to the states' assurance levels, EPA is implementing the Group 3 trading program for the 2021 control period exactly as the program would be implemented for any other control period. Thus, allocations of Group 3 allowances from each state's emissions budget to existing and new units are being made for the entire 2021 ozone season (*i.e.,* May 1, 2021, through September 30, 2021), emissions will be monitored and reported for the entire 2021 ozone season, and as of the allowance transfer deadline for the 2021 control period (*i.e.,* June 1, 2022) each source will be required to hold in its compliance account vintage-year 2021 Group 3 allowances not less than the source's emissions of NO_X during the entire 2021 ozone season. Because of the supplemental allowances allocated for the portion of the 2021 ozone season before the rule's effective date, EPA finds that implementing the program in this manner will substantively apply the final rule's emission reduction requirements only from the rule's effective date. Similarly, because of the increment to the states' assurance levels for 2021, EPA finds that implementing the trading program in this manner will substantively apply the final rule's more stringent assurance levels only from the rule's effective date. Moreover, any efforts undertaken by a source to reduce its emissions during the portion of the 2021 ozone season before the effective date of the rule will aid the source's compliance by reducing the amount of Group 3 allowances that the source will need to hold in its compliance account as of the allowance transfer deadline, increasing the range of options available to the source for meeting its compliance obligations under the Group 3 trading program.

EPA requested comment on this approach for implementing the Group 3 trading program in a manner that would apply the substantive increases in stringency established under the final rule on and after, but not before, the final rule's effective date. No commenters opposed this approach.

b. Creation of Initial Group 3 Allowance Bank

For this rulemaking, EPA is creating a limited initial bank of allowances that can be used for compliance in the CSAPR NO_X Ozone Season Group 3 Trading Program by converting certain allowances banked in 2017–2020 under the CSAPR NO_X Ozone Season Group 2 Trading Program at a conversion ratio determined by a formula. Any such conversion of banked allowances from the Group 2 trading program for use in the Group 3 trading program must ensure that implementation of the Group 3 trading program will result in NO_X emission reductions sufficient to address significant contribution in the 12 linked Group 3 states, while also providing industry certainty (and obtaining an environmental benefit) through continued recognition of the value of saving allowances through early reductions in emissions. EPA's approach to balancing these concerns in the CSAPR Update through the conversion of banked allowances from the CSAPR trading program for ozone season NO_X emissions was upheld in *Wisconsin* v. *EPA, see* 938 F.3d at 321.

Similar to the approach taken in the CSAPR update, EPA is creating the initial bank of allowances for the Group 3 trading program through a one-time conversion of banked Group 2 allowances. The allowances in the initial Group 3 bank will be allocated for the 2021 control period and will therefore be useable in that control period or any subsequent control period. Because the purpose of an initial bank is to assist in compliance flexibility without relaxing the program

stringency identified as appropriate to address states' obligations under the good neighbor provision, EPA's objective is to set the target amount for the initial bank at a level high enough to accommodate year-to-year variability in operations and emissions, as reflected in states' variability limits, but not high enough to allow sources collectively to plan to emit in excess of the collective state budgets. For this rulemaking, as proposed, EPA is determining that an initial bank amount approximately equal to the sum of the states' variability limits is a reasonable level to accomplish this objective, given the expectation that sources would generally seek to carry a bank of roughly that amount forward from year to year in order to retain a comparable degree of compliance flexibility in subsequent control periods.[195] Further, because emission reductions from some of the emission controls that EPA has identified as appropriate to use in setting budgets are first reflected in the 2022 state budgets rather than the 2021 state budgets, EPA is basing the initial bank target amount on the sum of the states' 2022 variability limits rather than the 2021 variability limits. This approach results in an initial bank target amount of 21,777 allowances, computed on the basis of a full ozone season.

As discussed in section VII.C.4.a, the effective date of this rule will occur after the start of the 2021 ozone season, and adjustments are being made to ensure that the increased stringency of this rule's state budgets and state assurance levels (*i.e.,* the sums of the budgets and variability limits) takes effect only after the rule's effective date. Consistent with these other adjustments, and as proposed, the initial bank target amount will be similarly prorated. For example, if the effective date of the final rule is June 1, 2021, which would be after the first 31 days of the 153-day ozone season have passed, the full-season initial bank target amount of 21,777 allowances would be prorated to an initial bank target amount of 17,365 allowances.[196] EPA notes that prorating the bank amount in this manner will not reduce sources' compliance flexibility for the 2021 ozone season, because the amounts of Group 3 allowances that sources will receive for the portion of the 2021 ozone season before the rule's effective date will be based on the existing Group 2 trading program budgets. The Group 2 budgets exceed the sources' collective 2019 emissions by over 38,000 tons (and exceed the sources' 2020 emissions by almost 60,000 tons), indicating potentially surplus allowances well above the full-season initial bank target amount of 21,777 allowances. Thus, although the prorating procedure will reduce the amount of Group 3 allowances that sources will receive in the form of an initial bank, the reduction in the quantity of these allowances will be more than offset by the supplemental Group 3 allowances that will be allocated in excess of sources' recent historical emission levels for the portion of the ozone season before this final rule's effective date.

Taking the same approach as was followed in the CSAPR Update, EPA will allocate the new Group 3 allowances constituting the initial bank through a conversion process in which Group 2 allowances allocated for the 2017 through 2020 control periods and banked under the existing Group 2 trading program will be exchanged for Group 3 allowances allocated for the 2021 control period at a uniform conversion ratio determined by a formula. The conversions will be carried out at the level of individual sources and general accounts, in each case using the same uniform conversion ratio. By creating the new Group 3 allowances through the conversion of previously banked Group 2 allowances, the bank creation mechanism rewards holders of banked Group 2 allowances for conducting emission reduction activities that contributed to the creation of those banked allowances as well as for financially supporting emission reductions activities at other sources through allowance purchases. Creating the new Group 3 allowances through conversion of previously banked Group 2 allowances also helps preserve the stringency of the Group 2 trading program for the states that remain covered by that trading program at levels consistent with the stringency found to be appropriate to address those states' good neighbor obligations with respect to the 2008 ozone NAAQS in the CSAPR Update.

Under EPA's proposed approach for creation of the bank, the conversion formula would have used the total quantity of 2017–2020 Group 2 allowances being converted as the numerator and the total quantity of 2021 Group 3 allowances being created as the denominator. EPA also proposed to give holders of 2017–2020 Group 2 allowances complete flexibility to choose how many of those allowances they wanted to include in the conversion process, making the formula numerator entirely dependent on those choices. An unavoidable consequence of this proposed flexibility was that EPA would have been unable to predict the conversion ratio until holders finalized their choices shortly before the conversion date. In the proposed rule, the formula denominator was also uncertain to a lesser degree because of the then-unknown magnitude of the prorating adjustment affecting the quantity of 2021 Group 3 allowances being created, although this uncertainty will be resolved as of publication of the final rule in the **Federal Register**. Commenters requested that EPA provide greater certainty concerning the conversion process, as discussed later in this section; further, commenters submitted no comments asking EPA to finalize the proposed flexibility for Group 2 allowance holders.

After consideration of comments, EPA is not finalizing the proposed flexibility for Group 2 allowance holders to decide how many Group 2 allowances to include in the conversion process and is instead finalizing a formula for the conversion ratio based on an alternative offered for comment that provides greater certainty. Under the alternative being finalized, the formula numerator is the portion of the total existing bank of 2017–2020 Group 2 allowances attributable to the Group 3 states, which is more specifically defined as: (1) The sum of the budgets of the Group 3 states under the Group 2 trading program for the 2017–2020 control periods, plus (2) the portion of the initial Group 2 bank target amount attributable to the Group 3 states, minus (3) the emissions of sources in the Group 3 states for the 2017–2020 control periods.[197] The formula denominator in the final rule continues to be based on the initial

[195] When establishing a similar initial bank under the CSAPR Update, EPA set the target bank amount at 1.5 times the sum of the states' variability limits. *See* 81 FR at 74557–60. Experience under that trading program indicates that a smaller initial bank would have provided sufficient flexibility, as the bank grew in each control period of the trading program and the prices of allowances remained well below the estimated control costs EPA used to establish the budgets under that rule. Additionally, allowance prices under that trading program were $500–$600 per allowance when initially recorded (roughly one-third of the $1,600/ton cost threshold used in developing the Group 2 budgets), indicating that the initial bank created by the conversion may have been too large to ensure incentives for continuing implementation of the control strategies contemplated under that rulemaking.

[196] The portion of the ozone season from June 1 through September 30 has 122 days (153 − 31 = 122), which is 79.74 percent of all the days in the ozone season (122 ÷ 153 = 0.7974). Multiplying the full-season initial bank target amount of 21,777 allowances by 79.74 percent yields a prorated target amount for the initial bank of 17,365 allowances.

[197] As stated in the proposed rule, the rationale for defining the formula numerator in this particular way is to preserve the intended stringency of the Group 2 trading program for the states and sources that will continue to participate in that program. *See* 85 FR at 69018.

Group 3 bank target amount, but reflects the full-season target amount instead of the target amount after the prorating adjustment. The final rule also provides for the value computed from the formula to be rounded down to the nearest whole number. Using data as of January 2021, the formula numerator will be 186,014 allowances [198] and the formula denominator will be 21,777 allowances, yielding a rounded conversion ratio of 8:1. In other words, the result of applying the formula in the final rule is that eight 2017–2020 Group 2 allowances will be exchanged for each 2021 Group 3 allowance created in the initial bank.[199] Continuing the previous example, if the rule's effective date is June 1, 2021 and the initial Group 3 bank target amount after prorating is therefore 17,365 allowances, then 138,920 Group 2 allowances [200] would be removed from the accounts where those allowances are held and 17,365 Group 3 allowances would be recorded in the same accounts.

In addition to requesting greater certainty about the conversion process, commenters also indicated an interest in receiving the allowances in the initial Group 3 bank more quickly than would have occurred under the proposed rule. In response to these comments, EPA has advanced the conversion process schedule such that the conversions will be completed more than two months earlier than proposed and shortly after recordation of Group 3 allowance allocations from the state budgets for the 2021 control period for most sources. Approximately 45 days after the rule's effective date, EPA will temporarily suspend acceptance of transfers of Group 2 allowances. Before resuming acceptance of such transfers, EPA will allocate Group 3 allowances up to the initial Group 3 bank target amount to Group 3 sources at the 8:1 conversion ratio in proportion to the amounts of 2017–2020 Group 2 allowances held in each such source's compliance account immediately before the conversion.[201] If the Group 3 sources' compliance accounts do not collectively hold enough Group 2 allowances to exchange for the full target amount of the initial Group 3 bank at the 8:1 conversion ratio, EPA will allocate Group 3 allowances up to the remainder of the initial Group 3 bank target amount to general accounts at the same 8:1 conversion ratio in proportion to each such general account's holdings of 2017–2020 Group 2 allowances immediately before the conversion.[202] For each Group 3 allowance allocated ard recorded in a given account, EPA will deduct from the same account eight 2017–2020 Group 2 allowances on a first-in, first-out basis. After recording the Group 3 allowance allocations and the 2017–2020 Group 2 allowance deductions, EPA will resume acceptance of transfers of Group 2 allowances.

Comment: Some commenters stated that EPA should not create an initial bank of Group 3 allowances because of a consequent reduction in stringency of the rule.

Response: EPA disagrees with the comment that it should not create an initial bank of Group 3 allowances under the new trading program. EPA believes creating an initial bank of Group 3 allowances will provide Group 3 sources flexibility to comply with the stringency of the new trading program in light of year-to-year variability in unit operations and emissions. Creating the initial bank of Group 3 allowances through the conversion of banked 2017–2020 Group 2 allowances also provides sources within the Group 3 states with an opportunity to benefit under the Group 3 trading program from their efforts to bank allowances under the Group 2 trading program. Failure to establish an initial bank could reduce the incentive to achieve early reductions and bank allowances in the future by signaling to market participants that banked allowances accrued under existing trading programs will hold no value in any future new or modified trading program. EPA's approach of establishing an initial Group 3 bank in an amount equal to the sum of the new trading program's aggregate variability limits is similar to the methodology followed in the CSAPR Update that was upheld against challenge in the *Wisconsin* decision.

Comment: Some commenters stated that EPA should create a larger bank, possibly by allowing some or all banked Group 2 allowances to be used for compliance in the Group 3 trading program on a 1-for-1 basis instead of being converted to Group 3 allowances at a conversion ratio greater than 1:1.

Response: EPA disagrees with these comments. Creating an overly large initial bank of Group 3 allowances, regardless of the conversion ratio used, would dilute the intended control stringency and emission budgets established in this rule to address Group 3 states' obligations under the good neighbor provision with respect to the 2008 ozone NAAQS. Certainly, given the large existing bank of 2017–2020 Group 2 allowances, allowing these Group 2 allowances to be used for compliance in the Group 3 trading program at a 1:1 ratio would unacceptably dilute the control stringency and emission budgets established by EPA in this rulemaking. As explained earlier in this section, EPA believes that creating an initial bank of Group 3 allowances in an amount not exceeding the sum of the Group 3 state's variability limits, and doing so through conversion of Group 2 allowances at an 8:1 ratio, is consistent with both achieving the requisite level of stringency and encouraging continued use of banking.

Comment: A commenter suggested that EPA should base the initial Group 3 bank target amount not on the sum of Group 3 states' variability limits for 2022, but instead on the sum of Group 3 states' variability limits for 2021.

Response: EPA disagrees with this comment. The initial Group 3 allowance bank is intended to accommodate year-to-year variability in operations and emissions, and EPA expects that on average, sources collectively will aim to carry forward the bank from year to year so that in each subsequent control period, sources will continue to have the flexibility needed to accommodate year-to-year variability in operations and emissions. Unlike the 2022 state emission budgets, the 2021 state emission budgets do not reflect emission reductions achievable from application of the full control stringency

[198] Under the Group 2 trading program, the sum of the 2017–2020 state budgets for the 12 Group 3 states is 680,872 tons (the sum of the budgets for the Group 3 states for 2017 is 170,218, and 170,218 × 4 = 680,872). The portion of the initial Group 2 bank target amount attributable to the Group 3 states is 53,619 tons (the sum of the variability limits for the Group 3 states for 2017 is 35,746, and 35,746 × 1.5 = 53,619). The sum of the Group 3 states' reported ozone season NO_X emissions for 2017 through 2020 is approximately 548,477 tons. Based on these data, the formula numerator would be 680,782 + 53,619 − 548,477 = 186,014 allowances.

[199] 186,014 ÷ 21,777 = 8.54, which rounds down to 8.

[200] 17,365 × 8 = 138,920. EPA notes that under this example, the deducted Group 2 allowances would constitute roughly half of all banked 2017–2020 Group 2 allowances projected to remain in all accounts (including the compliance accounts for sources that will continue to be covered under the Group 2 trading program in control periods after 2020) after deductions for compliance with the Group 2 trading program for the 2020 control period.

[201] Group 2 allowances held in Group 2 sources' compliance accounts will not be affected by the conversion process.

[202] If the Group 3 sources' compliance accounts and the general accounts combined do not collectively hold enough Group 2 allowances to exchange for the full target amount of the initial Group 3 bank at the 8:1 conversion ratio, the total quantity of Group 3 allowances created would be less than the initial Group 3 bank target amount. However, the outcome would be reasonable because it would occur only if owners of Group 3 sources in fact were not sufficiently interested in receiving banked Group 3 allowances to hold the required quantity of 2017–2020 Group 2 allowances in the appropriate accounts.

that EPA is finding necessary to resolve the Group 3 states' obligations under the good neighbor provision with regard to the 2008 ozone NAAQS. Because the Group 3 bank is intended to be an element of the Group 3 trading program on an ongoing basis, not just in 2021, as a matter of program design EPA considers it appropriate for the amount of the initial Group 3 bank to represent the full control stringency found to be necessary under this rule. For this reason, it is appropriate to base the initial Group 3 bank target amount on the sum of states' variability limits for the 2022 control period rather than the 2021 control period.

EPA also views creation of the larger initial Group 3 bank suggested by the commenter as unnecessary to ensure compliance is achievable. After consideration of the prorating adjustment discussed earlier in this section, using the 2021 variability limits instead of the 2022 variability limits as the basis for determining the size of the initial Group 3 bank would increase the size of the bank by less than 600 allowances. In the very unlikely event that Group 3 sources are unable to reduce their emissions in the 2021 control period sufficiently to meet their compliance obligations by holding the Group 3 allowances allocated from the state emission budgets and from the initial Group 3 bank, sources would be able to obtain well over 600 additional Group 3 allowances for 2021 compliance by electing to use the safety valve mechanism discussed in section VII.C.4.c.

Comment: Some commenters stated that under the proposed conversion procedures, sources would not know the quantities of Group 3 allowances they would receive in sufficient time to rely on that information for purposes of planning their compliance activities.

Response: EPA acknowledges that the large degree of flexibility offered to holders of Group 2 allowances under the proposed rule created uncertainty regarding one aspect of the process for creating the initial Group 3 bank—specifically, the conversion ratio that would be used to create the initial Group 3 bank. As discussed above, the final rule modifies the formula for the conversion ratio so that the value of the ratio (*i.e.,* 8:1 based on 2017–2020 data) is knowable as of the date of this final rule. In the final rule EPA has also advanced the schedule for carrying out the conversion process so that the allowances in the initial Group 3 bank will be recorded in accounts by 120 days after publication of the final rule in the **Federal Register**, or roughly two months before the end of the 2021 ozone season.

However, EPA disagrees that uncertainty regarding either the conversion ratio or the amount of Group 3 allowances received by any individual source from the initial bank has any meaningful effect on sources' ability to plan their compliance activities. As an initial matter, under a trading program, the most cost-effective compliance strategy for a source is generally to reduce its emissions if it believes it can do so for less than the market price of an allowance and then to purchase allowances as needed to cover its remaining emissions or to sell surplus allowances to other sources that cannot reduce emissions as cheaply. Because allowance prices under any trading program are uncertain, sources must always make these compliance planning decisions based on their best allowance price projections while recognizing the existence of price uncertainty. For purposes of forecasting future allowance prices under the Group 3 trading program, the only relevant question concerning the initial Group 3 bank is the total quantity of allowances that will be created in that bank, because that total amount will factor into the market balance between the overall supply of allowances and the overall demand for allowances. EPA's proposed rule provided essentially complete information about the total quantity of allowances that would be created in the initial Group 3 bank, and the final rule closely follows the proposed rule on this point. In short, nothing about EPA's proposed or final approach to creation of the initial Group 3 bank increased the uncertainty about future Group 3 allowance prices beyond the degree of uncertainty that is inherent in trading program-based approaches to environmental regulation.

Further, even if a particular source decides to not to avail itself of the flexibility provided by a trading program and instead chooses to plan its compliance strategy based on the number of allowances it expects to receive as zero-cost allocations, the quantity of allowances that a source might receive from the initial Group 3 bank would necessarily play a relatively modest role in such a strategy. Of the total allowances available for 2021 compliance that will be allocated to sources from the state emission budgets and from the initial Group 3 bank, more than 80 percent will come from the state emission budgets, and for subsequent control periods the proportion that will come from the state emission budgets will be 100 percent. In the proposed rule, EPA included extensive information on the proposed unit-level allocations from the proposed state emission budgets, including both a complete description of the allocation methodology and spreadsheets showing the allocations to each individual unit that would result from applying that methodology to the proposed state emission budgets. In the final rule, the only change to the allocation methodology is that, because certain units with scheduled future retirements will no longer receive allocations starting with the 2022, 2023, or 2024 control period when their scheduled retirements are taken into account for budget-setting purposes, the remaining units in those states that continue to operate will receive larger shares of the respective state budgets in those later control periods. It was clear from the proposed rule that any allocations of allowances from the initial Group 3 bank would be considerably smaller and therefore less relevant for an allocation-based compliance planning process than the allocations of allowances from the state emission budgets. This is consistent with the intended purpose of the initial Group 3 bank, which is to accommodate year-to-year variability in operations and emissions but not to allow for collective planned emissions to exceed the state emission budgets.

c. Opportunity To Obtain Additional Group 3 Allowances Through Further Conversion of Group 2 Allowances (''Safety Valve'' Mechanism)

As discussed in section VI.B.1, in order to further ensure allowance market liquidity and compliance flexibility, in this final rule EPA is creating a ''safety valve'' mechanism that will allow Group 3 sources to access additional Group 3 allowances for the 2021 control period. The new Group 3 allowances would be created in exchange for banked 2017–2020 Group 2 allowances that have not already been exchanged for Group 3 allowances as part of the process of creating the initial Group 3 allowance bank described in section VII.C.4.b. The safety valve mechanism will be available for the month of February 2022, which falls approximately midway between October 30, 2021 (the deadline for reporting of emissions for the last three months of the 2021 control period under the Group 3 trading program) and June 1, 2022 (the deadline by which Group 3 sources must hold Group 3 allowances in their compliance accounts sufficient to cover their emissions during the 2021 control period). The conversion ratio used in the safety valve mechanism will be 18:1—in other words, 18 banked 2017–2020 Group 2 allowances would have to

be surrendered in exchange for each Group 3 allowance issued through this mechanism. No Group 2 allowances will be exchanged for Group 3 allowances under the safety valve mechanism except as specifically requested by the designated representative for a Group 3 source.

EPA is establishing the safety valve mechanism and has designed its features to be responsive to comments on the proposed rule. Even without the safety valve mechanism, EPA considers it extremely unlikely that any source would be unable to achieve compliance with the Group 3 trading program's requirements. Sources have a flexible combination of options to achieve compliance, including reducing emission at the source, using the allowances allocated to the source from the applicable state's emissions budget and from the initial Group 3 bank, and purchasing allowances from other sources that have made emission reductions. However, given the short time-frame before implementation of the Group 3 trading program in the 2021 ozone season, inclusion of a safety valve mechanism will increase sources' confidence in their ability to comply. EPA views this as an enhancement to the trading program consistent with mechanisms included in other emissions trading programs, as long as the mechanism is implemented in a manner that does not weaken the ability of the trading program to address Group 3 states' obligations under the good neighbor provision with respect to the 2008 ozone NAAQS. The assurance that the safety valve mechanism does not undermine the purpose of the trading program is provided by the use of the 18:1 conversion ratio.

As discussed in section VII.C.4.b., EPA received comments expressing widely varying perspectives concerning whether and, if so, what quantities of Group 3 allowances should be made available for compliance flexibility beyond the allowances allocated from state budgets. Some industry commenters advocated for a mechanism that would allow them to purchase additional allowances at a price of $1,600 per allowance, consistent with EPA's estimate of the cost per ton of emission reductions achievable through optimization of installed SCR controls. In contrast, some commenters from downwind states advocated for no issuance of any Group 3 allowances beyond the state emission budgets, but one of these commenters also suggested that if any such Group 3 allowances were issued through the exchange of banked Group 2 allowances, the conversion ratio should reflect the relation of the estimated cost of the control strategy reflected in the Group 3 budgets to the market price of Group 2 allowances. The commenter suggested a conversion ratio of 11:1 based on the ratio of the same estimated $1,600 cost per ton of emission reductions available from SCR optimization to an estimated average market price for Group 2 allowances of $137 per Group 2 allowance during 2019 and 2020.[203] After consideration of these comments, EPA is setting the conversion ratio for the safety valve mechanism at 18:1, consistent with the principles underlying the recommendations of the commenters but using updated data. For the numerator of the conversion ratio, EPA is using $1,800 per ton, based on the estimated cost of the emission reductions available from SNCR optimization that are reflected in the final state emissions budgets. For the denominator of the updated ratio, EPA is using $100 per ton, reflecting an estimated average market price over the period from March 2020 through January 2021 for Group 2 allowances allocated for the 2020 control period.[204] EPA finds, first, that this conversion ratio is high enough to avoid interfering with incentives for sources to reduce emissions through the use of the control technologies identified as appropriate for establishing states' emissions budgets in this action, and second, that it is low enough to provide additional flexibility that, in extreme circumstances, could facilitate compliance by some sources. Based on the total quantity of banked 2017–2020 Group 2 allowances expected to remain after completion of the deductions necessary for Group 2 trading program compliance for the 2020 control period and the deductions made in the process of creating the initial Group 3 bank, EPA estimates that the maximum quantity of Group 3 allowances that could be created through the safety valve mechanism will be in the range of 7,000 to 9,000 Group 3 allowances. This degree of conversion of Group 2 allowances would be highly unlikely to occur, and indeed, EPA considers it more likely that no source will need to make use of the safety valve mechanism.

Under the final regulations, any use of the safety valve mechanism will be at the initiative of the designated representatives of Group 3 sources. Throughout the month of February 2022, EPA will accept requests from designated representatives for allocations of additional Group 3 allowances under the safety valve mechanism. It will be the responsibility of the Group 3 designated representatives to obtain any Group 2 allowances needed for this purpose, either by using any 2017–2020 Group 2 allowances remaining in the Group 3 source's compliance account after the initial Group 3 bank conversion process, transferring 2017–2020 Group 2 allowances held in the account of a Group 2 source under the control of the same owners and operators, or purchasing 2017–2020 Group 2 allowances from third parties. Holders of Group 2 allowances are not obligated to sell or transfer their allowances to effectuate such conversions if they prefer to retain such allowances for use in the Group 2 trading program.[205] As soon as practicable on or after March 1, 2022, if a request was received from the designated representative for a particular Group 3 source, EPA will deduct 2017–2020 Group 2 allowances in sets of 18 from the source's compliance account on a first-in, first-out basis up to the maximum number of sets of 2017–2020 Group 2 allowances available in the account. For each set of 2017–2020 Group 2 allowances deducted from a Group 3 source's compliance account, EPA will record one Group 3 allowance in the account.

[203] *See* Comments of Delaware Department of Natural Resources and Environmental Control (EPA–HQ–OAR–2020–0272–0122) at 14–15.

[204] According to price index values developed by SNL Energy and reported by S&P Global Market Intelligence, prices for 2020 Group 2 allowances ranged between $58 and $75 from March 2020 until mid-November 2020. The reported price index values then rose to $200 by year-end 2020 and to $475 for part of January 2021. The average of the reported daily price index values from March 2, 2020 (the first day of the price index series for Group 2 allowances allocated for the 2020 control period) through January 30, 2021 is $105, which EPA has rounded to $100 for purposes of computing the safety valve mechanism conversion ratio.

[205] EPA sees no reason for concern that the creation of the safety valve mechanism for the Group 3 trading program, based on conversion of Group 2 allowances to Group 3 allowances, would adversely impact sources that will continue to participate in the Group 2 trading program. In both the 2019 and 2020 control periods, NO_X emissions from the set of states that will continue to participate in the Group 2 trading program were at least 15 percent below the sum of the emission budgets for those states, indicating that continued compliance with the Group 2 trading program's requirements is readily achievable even before consideration of the existing bank of Group 2 allowances. In addition, EPA expects that few if any banked Group 2 allowances will be removed from the Group 2 trading program in order to create additional Group 3 allowances through the safety valve mechanism because it is extremely likely that Group 3 sources will be able to fully comply with the Group 3 trading program's requirements by reducing emissions, using allowances allocated from the Group 3 state emission budgets and from the initial Group 3 allowance bank, and trading with other Group 3 sources.

d. Recall of Group 2 Allowances Allocated for Control Periods After 2020

To maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program under this action, EPA is recalling CSAPR NO_X Ozone Season Group 2 allowances equivalent in amount and usability to all vintage year 2021–2024 CSAPR NO_X Ozone Season Group 2 allowances previously allocated to sources in Group 3 states and recorded in the sources' compliance accounts. Consistent with the proposed rule, the recall provisions established in this final rule apply to all sources in Group 3 states in whose compliance accounts CSAPR NO_X Ozone Season Group 2 allowances for a control period from 2021 through 2024 were recorded, including sources where some or all units have permanently retired or where the previously recorded 2021–2024 allowances have been transferred out of the compliance account.[206] However, in response to comments discussed at the end of this section, and as further detailed below, the final rule provides a more flexible compliance schedule intended to accommodate any sources that have already transferred the previously recorded 2021–2024 allowances out of their compliance accounts and provides greater flexibility as to the vintage years of Group 2 allowances that sources may surrender to achieve compliance. As requested in comments, the final rule also clarifies how the recall provisions apply in instances where a source and its allowances have been transferred to different parties and adds more specificity regarding the procedures that EPA will follow to implement the recall.

Under the Group 2 trading program regulations, each Group 2 allowance is a ''limited authorization to emit one ton of NO_X during the control period in one year,'' where the relevant limitations include the EPA Administrator's authority ''to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.'' 40 CFR 97.806(c)(6)(ii). In this action, the Administrator is determining that, in order to effectively implement the Group 2 trading program as a compliance mechanism through which states not subject to the Group 3 trading program may continue to meet their obligations under CAA section 110(a)(2)(D)(i)(I) with regard to the 2008 ozone NAAQS, it is necessary to limit the use of Group 2 allowances equivalent in quantity and usability to all Group 2 allowances previously allocated for the 2021–2024 control periods and recorded in the compliance accounts of sources in Group 3 states. The Group 2 allowances that have already been allocated to sources in Group 3 states for the 2021–2024 control periods and recorded in the sources' compliance accounts represent more than half of the total quantity of Group 2 allowances that have been allocated and recorded for the 2021–2024 control periods. Because allowances can be freely traded, if the use of the 2021–2024 Group 2 allowances previously recorded in Group 3 sources' compliance accounts (or equivalent Group 2 allowances) were not limited, the effect would be the same as if EPA had issued to sources in the states that will remain covered by the Group 2 trading program a quantity of allowances available for compliance under the 2021–2024 control periods more than double the levels that EPA determined to be appropriate emissions budgets for these states in the CSAPR Update. Through the use of banked allowances, the excess Group 2 allowances would affect compliance under the Group 2 trading program in control periods after 2024 as well. Continued implementation of the Group 2 trading program at levels of stringency consistent with the levels contemplated under the CSAPR Update therefore requires that EPA limit the use of the excess allowances, as EPA is doing in this final rule.

In the recall provisions finalized in this action, limitations on the use of the excess 2021–2024 Group 2 allowances are being implemented through requirements to surrender, for each 2021–2024 Group 2 allowance recorded in a Group 3 source's compliance account, one Group 2 allowance of equivalent usability under the Group 2 trading program. The surrender requirements apply to the owners and operators of the Group 3 sources in whose compliance account the excess 2021–2024 Group 2 allowances were initially recorded. In general, each source's current owners and operators will be required to comply with the surrender requirements for the source by ensuring that sufficient allowances to complete the deductions are available in the source's compliance account by one of two possible deadlines discussed below. However, an exception is provided if it is demonstrated to EPA's satisfaction that a source's current owners and operators obtained ownership and operational control of the source in a transaction that did not include rights to direct the use and transfer of some or all of the 2021–2024 Group 2 allowances allocated and recorded (either before or after that transaction) in the source's compliance account. The final rule provides that in such a circumstance, with respect to the 2021–2024 Group 2 allowances for which rights were not included in the transaction, the surrender requirements apply to the most recent former owners and operators of the source for which such a demonstration is not made. Because in this situation a source's former owners and operators might lack the ability to access the source's compliance account for purposes of complying with the surrender requirements, the former owners and operators will instead be allowed to meet the surrender requirements with Group 2 allowances held in a general account.[207]

To provide as much flexibility as possible consistent with the need to limit the use of the excess Group 2 allowances, for each 2021–2024 Group 2 allowance recorded in a Group 3 source's compliance account, EPA will accept the surrender of either the same specific 2021–2024 Group 2 allowance or any other Group 2 allowance with equivalent (or greater) usability under the Group 2 trading program. Thus, a surrender requirement with regard to a Group 2 allowance allocated for the 2021 control period may be met through the surrender of any Group 2 allowance allocated for the 2021 control period or the control period in any earlier year—in other words, any 2017–2021 Group 2 allowance.[208] Similarly, the surrender requirement with regard to a 2022 Group 2 allowance, a 2023 Group 2 allowance, or a 2024 Group 2 allowance may be met through the surrender of any 2017–2022 Group 2 allowance, any 2017–2023 Group 2 allowance, or any 2017–2024 Group 2 allowance, respectively.

Owners and operators subject to the surrender requirements can choose from two possible deadlines for meeting the requirements. The first deadline will be July 14, 2021. As soon as practicable or

[206] EPA also proposed to recall Group 2 allowances equivalent to all 2021–2024 Group 2 allowances that were allocated to non-source entities in Group 3 states and recorded in the entities' general accounts. This portion of the proposed rule is not being finalized because EPA has determined that no such allocations of 2021–2024 Group 2 allowances to any non-source entity in a Group 3 state have been recorded.

[207] EPA is currently unaware of any source that would need to use this flexibility but, in response to comments, has included the option in the final rule to address the theoretical possibility of such a situation.

[208] The first control period for the Group 2 trading program was in 2017.

after this date, EPA will make a first attempt to complete the deductions of Group 2 allowances required for each Group 3 source from the source's compliance account. EPA will deduct Group 2 allowances first to address any surrender requirements for the 2021 control period, then to address any surrender requirements for the 2022, 2023, and 2024 control periods in turn. When deducting Group 2 allowances to address the surrender requirements for each control period, EPA will first deduct allowances allocated for that control period and then will deduct allowances allocated for each successively earlier control period. This order of deductions is intended to ensure that whatever Group 2 allowances are available in the account are applied to the surrender requirements in a manner that both maximizes the extent to which all of the source's surrender requirements will be met and also ensures that any Group 2 allowances left in the source's compliance account after completion of all required deductions will be the earliest allocated, and therefore most useful, Group 2 allowances possible. Among the Group 2 allowances allocated for a given control period, EPA will first deduct allowances that were initially recorded in that account, in the order of recordation, and will then deduct allowances that were transferred into that account after having been initially recorded in some other account, in the order of recordation.

Following the first attempt to deduct Group 2 allowances to address Group 3 sources' surrender requirements, EPA will send a notification to the designated representative for each such source (as well as any alternate designated representative) indicating whether all required deductions were completed and, if not, the additional amounts of Group 2 allowances usable in the 2021, 2022, 2023, and/or 2024 control periods that must be held in the appropriate account by the second surrender deadline of September 15, 2021. Each notification will be sent to the email addresses most recently provided to EPA for the recipients and will include information on how to contact EPA with any questions. Consistent with the proposed rule, the final rule provides that no allocations of Group 3 allowances will be recorded in a source's compliance account until all the source's surrender requirements with regard to 2021–2024 Group 2 allowances have been met. For this reason, the principal consequence to a source of failure to fully comply with the surrender requirements by the July 14, 2021 surrender deadline is that any Group 3 allowances allocated to the units at the source for the 2021 and 2022 control periods that would otherwise have been recorded in the source's compliance account by July 29, 2021 will not be recorded as of that recordation date.

If all surrender requirements of 2021–2024 Group 2 allowances for a source have not been met in EPA's first attempt, EPA will make a second attempt to complete the required deductions from the source's compliance account (or from a specified general account, in the limited circumstance noted above) as soon as practicable on or after September 15, 2021. The order in which Group 2 allowances will be deducted will be the same as described above for the first attempt.

If the second attempt to deduct Group 2 allowances to meet the surrender requirements through deductions from the source's compliance account (or from a specified general account) is unsuccessful for a given source, the final regulations provide that as soon as practicable on or after November 15, 2021, to the extent necessary to address the unsatisfied surrender requirements for the source, EPA will deduct the 2021–2024 Group 2 allowances that were initially recorded in the source's compliance account from whatever accounts the allowances are held in as of the date of the deduction, except for any allowances where, as of January 31, 2021, no person with an ownership interest in the allowances was an owner or operator of the source, was a direct or indirect parent or subsidiary of an owner or operator of the source, or was directly or indirectly under common ownership with an owner or operator of the source. Although this consequence of a source's failure to hold the allowances necessary to comply with the surrender requirements in the source's compliance account (or a specified general account) by the surrender deadline was not expressly stated in the recall provisions in the proposed rule, the provision merely makes explicit a remedy for a source's noncompliance that is inherent in EPA's existing authority under 40 CFR 97.806(c)(6)(ii) to limit the use of any Group 2 allowance as necessary or appropriate to address the requirements of CAA section 110(a)(2)(d)(i)(I). Before making any deduction under this provision, EPA will send a notification to the authorized account representative for the account in which the allowance is held and will provide an opportunity for submission of objections concerning the data upon which EPA is relying. In EPA's view, this provision does not unduly interfere with the legitimate expectations of participants in the allowance markets because the provision would not be invoked in the case of any allowance that was transferred to an independent party in an arms-length transaction before EPA's intent to recall 2021–2024 Group 2 allowances became widely known. The provision would apply only to a Group 2 allowance that, as of January 31, 2021, was still controlled either by the owners and operators of the source in whose compliance account it was initially recorded or by an entity affiliated with such an owner or operator. EPA believes that by January 31, 2021, which was three months after publication of the proposed rule for this rulemaking in the **Federal Register**, all market participants had ample opportunity to become informed of the proposed rule provisions to recall 2021–2024 Group 2 allowances recorded in Group 3 sources' compliance accounts.[209]

The final rule includes the proposed provision under which failure of a source's owners and operators to comply with the surrender requirements is subject to enforcement as a violation of the Clean Air Act, with each allowance and each day of the control period constituting a separate violation.

To eliminate any possible uncertainty regarding the amounts of Group 2 allowances allocated for the 2021–2024 control periods (or earlier control periods) that the owners and operators of each Group 3 source must surrender under the final rule's recall provisions, EPA has prepared a list of the sources in Group 3 states in whose compliance accounts allocations of 2021–2024 Group 2 allowances were recorded with the amounts of the allocations recorded in each such compliance account for each control period from 2021 through 2024. An additional list shows, for each Group 3 source, the specific Group 2 allowances (batched by serial number) allocated for each control period and recorded in the source's compliance account and indicates whether, as of January 31, 2021, that batch of allowances was held in the source's compliance account, in an account believed to be partially or fully

[209] Even before publication of the proposed rule, EPA posted information on its websites to notify market participants that a pending rulemaking could have consequences for the value and usability of Group 2 allowances. The posted locations included the electronic portal that authorized account representatives use to enter allowance transfers for recordation by EPA in the Allowance Management System. Additionally, EPA emailed a notice identifying the possibility of such consequences to the representatives for all Allowance Management System accounts.

controlled by a related party (*i.e.,* an owner or operator of the source or an affiliate of an owner or operator of the source), or in an account believed to be fully controlled by independent parties. The lists are in a spreadsheet entitled ''Recall of CSAPR NO_X Ozone Season Group 2 Allowances'', available in the docket for this action. After the first and second surrender deadlines, EPA intends to update the lists to indicate for each Group 3 source whether or not the surrender requirements for the source under the recall provisions have been fully satisfied. EPA will post the updated lists on a publicly accessible website to ensure that all market participants have the ability to determine which specific 2021–2024 Group 2 allowances initially recorded in any given Group 3 source's compliance account do or do not remain subject to potential deduction to address the source's surrender requirements under the recall provisions.

Comment: One commenter requested that EPA provide greater flexibility for complying with the recall provisions in the case of sources that may have already sold the 2021–2024 Group 2 allowances previously recorded in the sources' compliance accounts. The commenter suggested that such sources might have difficulty acquiring the Group 2 allowances needed to comply with the surrender requirements by the proposed surrender date, which would have been 60 days after publication of the final rule in the **Federal Register**.

Response: In the final regulations, EPA has modified the recall provisions to provide two deadlines for compliance with the surrender requirements: July 14, 2021 and September 15, 2021. The final provisions also provide greater flexibility than the proposed rule by allowing the surrender requirements to be satisfied not only with Group 2 allowances allocated for the same control periods as the excess 2021–2024 Group 2 allowances, but also with Group 2 allowances allocated for earlier control periods. Any source may miss the first surrender deadline with no consequence except that any Group 3 allowances allocated to the units at the source will not be recorded in the source's compliance account by the otherwise applicable recordation date of July 29, 2021, but instead will be recorded after the source has fully complied with the surrender requirements. The second surrender deadline is expected to be more than five months after the publication date—and six months after the signature date—of this final rule. EPA believes that the second deadline provides sufficient time for any source that has sold the 2021–2024 Group 2 allowances initially recorded in the source's compliance account to acquire replacement Group 2 allowances for purposes of complying with the recall provisions. Further, because at the time of the proposed rule in this action, the large majority of Group 3 sources subject to the recall provisions still held all 2021–2024 Group 2 allowances initially recorded in their compliance accounts, EPA expects that most sources will be able to easily comply with the first deadline simply by not transferring those Group 2 allowances to another account before that deadline. Inclusion of the first deadline thus ensures that EPA will be able to record most Group 3 allowances within 30 days after the effective date of this final rule.

Comment: One commenter suggested that retired sources that have already sold the 2021–2024 Group 2 allowances recorded in their compliance accounts should not be subject to the recall provisions on the grounds that ''requiring already-retired units to purchase allowances would be antithetical to the goal of a trading program, in which allowances can be freely traded.'' The commenter also suggested that there might be no willing sellers of Group 2 allowances from whom the retired sources could purchase replacement Group 2 allowances to comply with the recall provisions. The commenter further asserted that the proposed rule did not provide adequate notice that the recall provisions would apply to retired sources because the proposed regulatory text included a cross-reference to an existing rule section that addresses retired units.

Response: EPA disagrees with this comment. As explained earlier in this section, recall of Group 2 allowances equivalent in quantity and usability to the 2021–2024 Group 2 allowances allocated to Group 3 sources is necessary to maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program, because not recalling the excess allowances would be equivalent to increasing the budgets for the remaining Group 2 states, contrary to the stringency of the requirements established for those states in the CSAPR Update. The necessity of recalling the excess Group 2 allowances exists regardless of whether the sources in whose compliance accounts the excess allowances were initially recorded continue to operate or have retired.

The commenter provides no support for the assertion that requiring retired sources to comply with the recall provisions is somehow inconsistent with a trading program, and EPA sees no basis for the assertion. EPA has made clear that the recall provisions apply to the owners and operators of the sources in whose compliance accounts the excess Group 2 allowances were initially recorded (and who paid nothing for those Group 2 allowances), not to persons who may have purchased the excess Group 2 allowances in arms-length transactions before EPA provided general notice of the proposed recall. By honoring arms-length market transactions for Group 2 allowances, EPA is executing the recall in a manner that is entirely consistent with the normal freedom to trade allowances under EPA's trading programs.

The commenter's suggestion that there might be no willing sellers of Group 2 allowances is speculative and contrary to EPA's experience in administering every trading program implemented by the Agency over the course of the last 25 years, starting with the Acid Rain Program. The commenter's statement that ''some Group members are already finding that Group 2 allowances are not readily available because companies are holding onto them'' is vague and insufficient to counter EPA's reasonable expectation, supported by decades of experience, that Group 2 allowances will be available for purchase in the six-month period following finalization of this action. To the extent that public notice of proposed changes to regulatory requirements may have temporarily affected activity in the market for Group 2 allowances, any such temporary effects would indicate only that, as intended, public notice made market participants aware of the possibility of changed regulatory requirements. The fact that some market participants may view waiting for the additional information contained in the final regulatory requirements as sensible does not serve as a reasonable basis for assertions that allowance markets will be illiquid when those final regulatory requirements are made public.

The commenter's assertion that the proposed rule did not provide adequate notice that the recall provisions would apply to retired sources is belied by the fact that the commenter, as well as other commenters, understood that the recall provisions were proposed to apply to retired sources and submitted comments on that aspect of the proposed rule. Moreover, the commenter offers no basis to support the notion that any person reviewing the proposed rule would reasonably have believed that the proposed recall did *not* apply to retired

sources. The section of the preamble to the proposed rule that discusses the recall provisions states that the recall was proposed to apply with respect to ''all'' 2021–2024 Group 2 allowances allocated not only to *sources* in Group 3 states but also to *non-source entities* in Group 3 states. There is no language indicating that any source, retired or not, would be treated differently under the provisions than any other source, and the inclusion of non-source entities left no room for an interpretation that continued production of electricity and emissions was a prerequisite for applicability of the recall. The fact that, in order to be as clear as possible that the recall applied to sources with retired units, the proposed regulatory text included a cross-reference to an existing regulatory text provision identifying permanently retired units, but did not use the exact words ''permanently retired units,'' does not somehow manufacture a lack of notice. The use of cross-references is common and appropriate in regulatory text. Further, the proposed regulatory text would have encompassed 2021–2024 Group 2 allowances allocated to retired units even without the clarifying cross-reference.

Comment: One commenter requested that the regulations lay out in greater detail the specific procedures EPA would follow to administer the recall. The commenter sought clarification specifically as to how the recall provisions would apply in instances where a source or its allowances had been sold, potentially to different purchasers.

Response: As described earlier in this section, the final regulations include more detailed provisions concerning the procedures EPA will follow to deduct Group 2 allowances to implement the surrender requirements. Consistent with the proposed rule, the final surrender requirements apply with respect to all Group 3 sources in whose compliance accounts 2021–2024 Group 2 allowances were recorded, regardless of whether some or all units at the source may have retired or whether the source or its allowances may have been sold. However, in response to the comment, the final regulations provide that if it is demonstrated to EPA's satisfaction that the current owners and operators of a source obtained ownership and operational control of the source in a transaction that did not include rights to direct the use and transfer of some or all of the 2021–2024 Group 2 allowances allocated and recorded (either before or after that transaction) in the source's compliance account, then with regard to the 2021–2024 Group 2 allowances for which such rights were not included in the transaction, the surrender requirements apply to the most recent former owners and operators of the source for which such a demonstration is not made. EPA believes that this provision identifies the appropriate parties to whom the surrender requirements should apply in the situation identified by the commenter, consistent with EPA's intent expressed in the proposed rule for the requirements to apply to the owners and operators of the Group 3 source in whose compliance account the excess 2021–2024 Group 2 allowances were initially recorded.

Comment: One commenter requested that where a Group 3 source has purchased additional 2021–2024 Group 2 allowances beyond those initially recorded in the source's compliance account, the additional 2021–2024 Group 2 allowances should not be subject to the recall provisions but should remain available for transfer to a Group 2 source for future use in the Group 2 trading program. Alternatively, the commenter requested that EPA convert the additional 2021–2024 Group 2 allowances to Group 3 allowances that could be used in the Group 3 trading program.

Response: Under the final procedures for implementing the recall provisions, where a Group 3 source continues to hold the 2021–2024 Group 2 allowances initially recorded in the source's compliance account and also holds additional 2021–2024 Group 2 allowances purchased in an arms-length transaction before January 31, 2021, surrender of the initially recorded 2021–2024 Group 2 allowances would satisfy the recall provisions and the purchased 2021–2024 Group 2 allowances would remain available for transfer to a Group 2 source for future use in the Group 2 trading program. The purchased 2021–2024 Group 2 allowances would not be available for use in the Group 3 trading program, either through conversion to Group 3 allowances or otherwise.

5. Compliance Deadlines

As discussed in section IV.C. of this preamble, the final rule requires sources to comply with the revised respective NO_X emission budgets for the ozone seasons (May 1 through September 30 of each year) in 2021 and subsequent years in order to ensure that these necessary NO_X emission reductions are implemented to assist in downwind states' attainment and maintenance of the 2008 ozone NAAQS. The increased stringency of Group 3 budgets for the 2021 ozone season will take effect on the effective date of this action, which will be part of the way into the 2021 ozone season, but before the July 20, 2021 Serious area attainment date. Thus, under the new CSAPR NO_X Ozone Season Group 3 Trading Program established in this rulemaking, the first affected control period is the 2021 ozone season (*i.e.* May 1, 2021, through September 30, 2021).

Under all CSAPR trading programs, compliance at the source level is achieved by each source surrendering by a compliance deadline—defined in the new Group 3 trading program regulations at 40 CFR 97.1002 as the ''allowance transfer deadline''—a number of allowances equal to the source's total emissions for the preceding ozone-season control period.

For previous control periods under the existing CSAPR trading programs, the allowance transfer deadline was March 1 of the year following the control period. In this action, EPA is establishing the allowance transfer deadline for the Group 3 trading program—and for all the other CSAPR trading programs starting with the 2021 control periods [210]—to be June 1 of the year after the control period.[211] For example, under this coordinated deadline, June 1, 2022, is the date by which Group 3 sources will be required to hold Group 3 allowances for the 2021 control period. The reason for the change from earlier practice is to accommodate the change in the methodology and schedule for allocating allowances to units from the new unit set-asides that will start with the 2021 control periods. Under that revised methodology, allowances from the new unit set-asides will be recorded in sources' compliance accounts by May 1 of the year following the control period, and some additional period after that date is needed to allow for allowance purchases in case a source receives fewer allowances from the new unit set-aside than anticipated. Under the previous regulations at 40 CFR 97.812, the deadline for recording second-round allocations from the new unit set-asides was February 15, two weeks before the March 1 allowance

[210] As discussed in section VII.C.8.b., in order to minimize unnecessary differences between the CSAPR trading programs and the similarly structured Texas SO_2 Trading Program, EPA is revising the allowance transfer deadline under the Texas SO_2 Trading Program. However, EPA did not propose to revise the allowance transfer deadline under the Acid Rain Program for SO_2 emissions (which is February 29 in leap years and March 1 in other years).

[211] EPA proposed and requested comment on implementing the revisions as of the 2023 and 2021 control periods, respectively. No comments were received, and EPA is simplifying the regulations by implementing the revisions as of the 2021 control period. For further discussion, see section VII.C.8.b.

transfer deadline. EPA believes sources will have greater trading flexibility if this interval is extended to a full month, resulting in the allowance transfer deadline of June 1. Extension of the allowance transfer deadline is not expected to have any impact on the achievement of the CSAPR trading programs' environmental objectives because it will not affect the quantities of allowances that sources will be required to hold as of the deadline or the total quantities of allowances that will be made available for compliance in advance of the deadline. Further discussion is provided in sections VII.C.3.c and VII.C.8.b.

EPA received no comments on the Group 3 trading program compliance deadlines for holding allowances after the end of each control period. Comments concerning the implementation of emission budgets that require emission reductions as of the 2021 ozone season instead of a later ozone season are addressed in sections VI.B.1 and VI.C.1.

6. Monitoring and Reporting

Monitoring and reporting in accordance with the provisions of 40 CFR part 75 are required for all units subject to all the CSAPR trading programs, which includes all units covered under this final rule. Consistent with these existing requirements, the monitoring system certification deadline by which monitors are installed and certified for compliance use under the CSAPR NO_X Ozone Season Group 3 Trading Program generally will be May 1, 2021, the beginning of the first control period in this final rule, with potentially later deadlines for units that commence commercial operation less than 180 days before that date. Units already in compliance with monitoring system certification requirements for the Group 2 trading program will not have to undertake any additional activities to certify their monitoring systems for the Group 3 trading program. Similarly, Group 3 units will not have to undertake additional activities to update any facility account demographic information. All account demographic information of current Group 2 facility accounts will be transitioned to the Group 3 trading program, including an account's designated representative, alternate designated representative, and any agents. The first period in which emission reporting is required under the new Group 3 trading program will be the quarter that includes May 1, 2021, (*i.e.,* the second quarter of the year that covers April, May, and June). These monitoring and reporting requirements and deadlines are analogous to the current deadlines under the CSAPR NO_X Ozone Season Group 2 Trading Program.

Under 40 CFR part 75, a unit has several options for monitoring and reporting, including the use of a CEMS; an excepted monitoring methodology based in part on fuel-flow metering for certain gas- or oil-fired peaking units; low-mass emissions monitoring for certain non-coal-fired, low emitting units; or an alternative monitoring system approved by the Administrator through a petition process. In addition, sources can submit petitions to the Administrator for alternatives to individual monitoring, recordkeeping, and reporting requirements specified in 40 CFR part 75. Each CEMS must undergo rigorous initial certification testing and periodic quality assurance testing thereafter, including the use of relative accuracy test audits and 24-hour calibrations. In addition, when a monitoring system is not operating properly, standard substitute data procedures are applied and result in a conservative estimate of emissions for the period involved.

Further, 40 CFR part 75 requires electronic submission of quarterly emissions reports to the Administrator, in a format prescribed by the Administrator. The reports will contain all of the data required concerning ozone season NO_X emissions.

Units currently subject to the CSAPR NO_X Ozone Season Group 2 Trading Program are required to monitor and report NO_X emissions in accordance with 40 CFR part 75, so covered sources in the Group 3 trading program will simply continue the same monitoring and reporting practices as required by 40 CFR part 75 under the Group 2 trading program.

7. Recordation of Allowances

EPA is establishing a schedule for recording allocations of vintage-year 2021 CSAPR NO_X Ozone Season Group 3 allowances to ensure that affected sources are allocated vintage year 2021 allowances as soon as practicable and well before the 2021 ozone season compliance deadline (June 1, 2022). EPA is also establishing a schedule for recording allocations of vintage-year 2022 CSAPR NO_X Ozone Season Group 3 allowances that accommodates sources' expectation to receive these allowance allocations soon after the publication of this final rule while also ensuring that states have the opportunity to develop and submit to EPA SIP revisions concerning allocations of allowances for vintage year 2022 and later.

Specifically, allocations to existing units for the first control period outlined in this final rule (*i.e.* the 2021 ozone season) will be recorded by July 29, 2021. EPA will also record allocation of vintage year 2022 allowances by this deadline for all units except those in states that provided to EPA, by June 29, 2021, a letter indicating an intent to submit a SIP revision that, if approved, would substitute state-determined allocations for the default allocations determined by EPA for the 2022 control period. The deadline for states to submit to EPA such SIP revisions will be September 1, 2021. If a state that notified EPA of its intent to submit a SIP revision fails to submit such a SIP by the SIP submission deadline, EPA will record vintage year 2022 FIP allocations to the sources in the state no later than September 15, 2021. No later than March 1, 2022, EPA will record the SIP allocations of vintage year 2022 Group 3 allowances for states with approved SIP revisions. By this same deadline, EPA will record the FIP allocations of vintage year 2022 Group 3 allowances for states whose SIP revisions are not approved by EPA.

The recordation deadline for vintage year 2021 allowances to existing units is anticipated to be approximately 11 months before the date by which sources are required to hold allowances sufficient to cover their emissions for that first control period (June 1, 2022, as discussed above). This schedule allows sources ample time to engage in allowance trading activities consistent with their preferred compliance strategies. EPA will record vintage year 2023 and 2024 Group 3 allowance allocations to existing units by July 1, 2022, and vintage year 2025 and 2026 Group 3 allowance allocations by July 1, 2023. By July 1 of each year after 2023, EPA will record Group 3 allowance allocations to existing units for the control period in the third year after the year of recordation. The recordation deadlines will apply to recordation of both allocations based on the default allocation provisions and allocations provided by states pursuant to approved SIP revisions.

As an exception to all of the recordation deadlines that would otherwise apply, EPA will not record any allocations of Group 3 allowances in a source's compliance account unless that source has complied with the requirements to surrender previously allocated 2021–2024 Group 2 allowances. The surrender requirements are necessary to maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that

program under this final rule. EPA finds that it is reasonable to condition the recordation of Group 3 allowances on compliance with the surrender requirements because the condition will spur compliance and will not impose an inappropriate burden on sources. EPA considers establishment of this condition, which will facilitate the continued functioning of the Group 2 trading program, to be an appropriate exercise of the Agency's authority under CAA section 301 (42 U.S.C. 7601) to prescribe such regulations as are necessary to carry out its functions under the Act.

EPA notes that recording allocations to existing units generally three years in advance under the new Group 3 trading program represents a change from the historical recordation schedules for allocations to existing units under the other CSAPR trading programs, which have generally provided for such allocations to be recorded four years in advance. In this action, EPA is revising the recordation schedules under the other CSAPR trading programs, as well as the similarly structured Texas SO_2 Trading Program, so as to generally record allocations to existing units three years in advance. This change will take effect with allocations for the 2025 control periods, which will be recorded by July 1, 2022, instead of by July 1, 2021. The reason for the change is the discovery of a timing conflict in all the CSAPR trading programs between the requirement to record four years in advance and the separate provisions governing allocations to existing units that have ceased operations. Under those separate provisions, EPA is unable to determine whether some existing units are entitled to continue to receive their allowance allocations more than three years in advance, and thus EPA does not have the information necessary to record all the allocations four years in advance. Further discussion of this revision to the schedule for recording allocations to existing units is provided in section VII.C.8.a.

With respect to allocations of allowances from the new unit set-asides and Indian country new unit set-asides, in previous control periods under the existing CSAPR trading programs, EPA has recorded these allocations in two rounds, by August 1 of the control period and by February 15 of the year following the control period. In this action, EPA is adopting a new one-round process for determining allocations from the new unit set-asides and Indian country new unit set-asides, and consistent with that revised allocation process, starting with allocations for the 2021 control periods,[212] EPA will record all allocations from these set-asides as of May 1 in the year following the control period, in both the Group 3 trading program and the existing CSAPR trading programs, and both where the allocations are determined by EPA and where the allocations are provided by states pursuant to approved SIP revisions. Further discussion is provided in sections VII.C.3.c and VII.C.8.b.

8. Conforming Revisions to Regulations for Existing Trading Programs

As discussed elsewhere in this preamble, in most respects, but not in every respect, the provisions of the CSAPR NO_X Ozone Season Group 3 Trading Program at subpart GGGGG of 40 CFR part 97 parallel the provisions that have applied for control periods through 2020 under the other CSAPR trading programs[213] at subparts AAAAA through EEEEE of part 97 established in the CSAPR rulemaking and the CSAPR Update and, to a somewhat lesser extent, the provisions of the similarly structured Texas SO_2 Trading Program established at subpart FFFFF of part 97. This section discusses the provisions of the new Group 3 trading program that differ from the provisions that have applied under the existing CSAPR trading programs, beyond the provisions discussed in section VII.C.4. addressing the transition to the new Group 3 trading program. This section also discusses various minor corrections and clarifications to the regulations.

To clarify and facilitate administration of the regulations for all of EPA's trading programs in 40 CFR part 97, and to maintain their parallel nature to the extent possible, EPA is amending the regulations for the existing trading programs to reflect certain revisions as noted in the sections of this preamble describing the new Group 3 trading program. Section VII.C.8.a. addresses the revisions discussed in section VII.C.7. to address a timing conflict in the current regulations for all of the existing programs. Section VII.C.8.b. addresses the revisions discussed in sections VII.C.3.c and VII.C.3.d to simplify and improve the process for allocating allowances from the new unit set-asides and Indian country new unit set-asides under the existing CSAPR programs. Section VII.C.8.c. addresses additional minor revisions and corrections. EPA received no adverse comment regarding any of these conforming revisions or corrections.

In this action, EPA did not reopen or request comment on the regulations for any of the existing trading programs in 40 CFR part 97, subparts AAAAA through FFFFF, except with respect to specific revisions to these subparts identified in this section, as well as the revisions to the regulations for the Group 2 trading program discussed in section VII.C.4. that address the transition from the Group 2 trading program to the Group 3 trading program.

a. Resolution of Timing Conflict Between Certain Existing Provisions

Consistent with the provisions of the new CSAPR trading program finalized in this action, EPA is amending the regulations for the existing CSAPR trading programs and the Texas SO_2 Trading Program to resolve a timing conflict between the provisions that set deadlines for recordation of allowances allocated to existing units and the provisions that govern allocations of allowances to units that have ceased operation for the control periods in at least two consecutive years. The recordation provisions in all of the trading programs generally have required EPA to record allocations of allowances to existing units four years in advance of the control periods for which the allowances are being allocated. For example, on July 1, 2020, EPA recorded allocations to most existing units of allowances for use in the 2024 control periods for all the existing trading programs. However, other provisions of all the trading programs require EPA not to record allocations to existing units that do not operate for two consecutive control periods, starting with the fifth control period after the first control period in which the unit did not operate. For example, if a unit that would otherwise receive allocations as an existing unit does not operate in the 2019 and 2020 control periods, the unit will continue to receive allocations for the control periods in 2019 through 2023 but will no longer be entitled to receive allocations for control periods in 2024 and thereafter. These two sets of timing requirements are in conflict, as demonstrated by the examples just presented: as of the July 1, 2020,

[212] EPA proposed and requested comment on implementing the revisions as of the 2023 and 2021 control periods, respectively. No comments were received, and EPA is simplifying the regulations by implementing the revisions as of the 2021 control period. For further discussion, see section VII.C.8.b.

[213] The existing CSAPR trading programs and their respective subparts of 40 CFR part 97 are: CSAPR NO_X Annual Trading Program (subpart AAAAA), CSAPR NO_X Ozone Season Group 1 Trading Program (subpart BBBBB), CSAPR SO_2 Group 1 Trading Program (subpart CCCCC), CSAPR SO_2 Group 2 Trading Program (subpart DDDDD), and CSAPR NO_X Ozone Season Group 2 Trading Program (subpart EEEEE).

deadline to record allocations for the 2024 control periods, EPA could not yet know whether any units that did not operate in 2019 might resume operation later in 2020, and EPA therefore could not yet know whether all such units would lose their eligibility to receive allocations for the 2024 control periods or not.[214]

To address the timing conflict described above, EPA is amending the regulations for each of the CSAPR trading programs and the Texas SO_2 Trading Program to generally require recordation of allowances allocated to existing units to take place three years rather than four years in advance of the control period for which allowances are being allocated. Returning to the examples above, if these amendments had been in effect with respect to allocations for the control periods in 2024, EPA would not have been required to record allocations for the 2024 control period until July 1, 2021, by which time complete information on all units' operations in 2019 and 2020 will be available. Relatedly, for states that determine allocations of allowances to their sources under approved SIP revisions, EPA is amending the deadlines by which the states must submit the allocations to EPA for recordation. Under the amended deadlines, the states' submissions are due three years instead of four years before the applicable control period.[215]

The amended recordation and submission schedules will be effective beginning with recordation of allocations for control periods in 2025 and will apply to EPA's schedule for recording not only the allocations determined by EPA under the federal CSAPR trading programs but also the allocations determined by states or EPA under state CSAPR trading programs that are similarly recorded by EPA. EPA believes these amendments address the timing conflict in the existing trading program regulations in a manner that is as consistent as possible with the other provisions of the regulations, because while the amendments alter the point in time at which trading program participants receive allowances, the amendments will not alter the quantities of allowances received by any participant in any of the existing trading programs. In contrast, the only two other simple options for resolving the timing conflict—either shortening the period of non-operation that would cause a unit to lose its allocation from two years to one year or lengthening the period for which non-operating units would retain their allowance allocations from five years to six years—would cause changes in the amounts of allowances received by some trading program participants, and some stakeholders might view those changes as inequitable or undesirable for other policy reasons.

Further details on the specific regulatory provisions that are affected by the revisions are provided in section IX.D. of the preamble.

b. Modifications to NUSA Provisions

Consistent with the provisions of the new CSAPR trading program in this action for ozone season emissions of NO_X from sources in Group 3 states, EPA is amending the regulations for the existing CSAPR trading programs governing allocations of allowances to units from NUSAs and Indian country NUSAs to reduce the potential for inequitable outcomes and to clarify and simplify the regulations. In order to ensure maximum consistency across all participants in the trading programs, the amendments will govern EPA's administration of the integrated trading programs not only under FIPs but also under approved SIPs where the NUSA allocation procedures are specified in provisions of the federal CSAPR trading programs in 40 CFR part 97 that have been incorporated into the SIP by reference.

The regulations applicable to control periods through 2020 under the existing CSAPR trading programs have provided for a two-round allocation process. For purposes of the first round, a unit was generally eligible to receive allocations from the NUSA for its state regardless of when it commenced commercial operation, as long as either no allocation of allowances to the unit as an existing unit was previously determined[216] or the unit was no longer entitled to receive its previously determined allocation as an existing unit. The first-round allocations were calculated during the control period at issue and were proportional to the eligible units' emissions during the preceding control period, up to the amount of allowances available in the NUSA. EPA performed preliminary calculations and published a notice by June 1, provided an opportunity for objections, and then adjusted the calculations as necessary, issued a final notice, and recorded the allocations by August 1 of the control period.

If any allowances remained in the NUSA for a given state after the first round, EPA carried out a second round, for which eligibility was limited to units that commenced commercial operation in the year of the control period at issue or the preceding year. The second-round allocations were calculated early in the year after the year of the control period at issue (very shortly after the January 30 deadline for submission of emissions data for October through December) and were proportional to the positive differences, if any, between the eligible units' emissions during the control period at issue and the amounts of any allocations the units received in the first round, up to the remaining amount of allowances available in the NUSA. Any allowances remaining after the second round were allocated to existing units in the state in proportion to their previous allocations. EPA made a preliminary identification of eligible units and published a notice by December 15, provided an opportunity for objections, and then performed the calculations, issued a final notice, and recorded the allocations by February 15 following the year of the control period, two weeks before the then-applicable March 1 allowance transfer deadline.

As indicated in the description above, the previous procedures had the potential to produce inequitable results, where some units could receive allowances in the first round (based on their emissions in the preceding control period) that exceeded the amounts needed to cover their emissions during the control period at issue, while other units that commenced operation more recently might not receive any allowances in either the first round (because the units had no covered emissions in the preceding control period) or the second round (because the NUSA may have been exhausted in the first round). Further, based on the experience of administering the two-round NUSA allocation process since 2015, EPA believes the previous procedures were unnecessarily complex and caused confusion for some market participants.

[214] Because the 4-years-in-advance recordation schedule was phased in, the conflict with the provision addressing units that have ceased operation did not affect recordation activities under any CSAPR program until 2018. To date, EPA has addressed the conflict by deferring recordation of allocations to certain units past the applicable recordation deadlines until all information needed to determine whether the units are entitled to receive the allocations becomes available.

[215] Because states' deadlines for submission of SIP revisions under the CSAPR regulations are based on the deadlines by which they must submit their subsequent state-determined allowance allocations, in some circumstances the revision to the deadline for submitting allowance allocations will also effectively extend the deadline for such a SIP revision. *See, e.g.,* 40 CFR 52.38(a)(4)(ii), (a)(5)(vi).

[216] A determination that a unit should be allocated zero allowances is considered an allocation. *See, e.g.,* 40 CFR 97.402 (definition of ''allocate or allocation'').

To simplify the NUSA allocation process and eliminate the potential inequities noted, EPA is amending the regulations for the existing CSAPR programs to replace the previous two-round NUSA allocation process with a one-round process that will allocate allowances to all eligible units in proportion to their emissions in the control period at issue. The amended provisions will be effective beginning with NUSA allocations for the control periods in 2021. Under the procedures, which apply to both NUSAs and Indian country NUSAs, EPA will perform preliminary calculations and issue a notice by March 1 of the year after the control period at issue, one month after the January 30 deadline for submission of the required emission data. After providing an opportunity for objections, EPA will make any necessary adjustments, issue a final notice, and record the allowances by May 1. To accommodate this process, the amendments also extend the allowance transfer deadline (*i.e.,* the date by which all covered sources must hold allowances in their compliance accounts sufficient to cover their emissions during the preceding control period) by three months, from March 1 of the year following the control period to June 1. In coordination with the revised recordation deadlines, EPA is also extending the deadline for states to submit to EPA their state-determined allocations for new units from July 1 in the year of the control period to April 1 in the year following the control period. Finally, although the Texas SO_2 Trading Program does not have NUSA provisions, in order to minimize unnecessary differences between the deadlines for analogous provisions in that program and the CSAPR programs, EPA is also revising the Supplemental Allowance Pool recordation deadline and the allowance transfer deadline under the Texas SO_2 Trading Program to May 1 and June 1, respectively, of the year after the control period. Like the amendments to the NUSA provisions, the amendments to the deadlines described in this paragraph would apply for purposes of EPA's administration of the integrated trading programs under both FIPs and approved SIPs.

The revisions to the NUSA allocation procedures also allow for related simplification of the CSAPR trading programs' assurance provisions. Under the assurance provisions that have applied for control periods through 2020, when emissions in a state for a given control period exceed the state's assurance level, if there are any units in the state that operated during the control period but that did not receive an actual allowance allocation either as an existing unit or from the NUSA, the regulations require EPA to publish a notice calling for the owners and operators of such units to submit certain information which EPA would use to determine imputed allowance allocations for the units. EPA then would use the imputed allowance allocations for these units, together with the actual allowance allocations for other units, to apportion responsibility for the assurance level exceedance among the owners and operators of all the state's units. Under the amendments to the NUSA allocation process, all units that have covered emissions during any control period will receive allocations either as an existing unit or from the NUSA, making the procedures for determining imputed allocations unnecessary. Accordingly, EPA is simplifying the assurance provisions for all of the existing CSAPR trading programs by removing the requirement for EPA to issue the additional notice just discussed, starting with the 2021 control periods.[217] EPA is also revising the date as of which the ''common designated representative'' for a group of sources is determined for purposes of the assurance provisions from April 1 to July 1 of the year following the control period, preserving that date's current position of being one month after the allowance transfer deadline. This revision maintains the existing coordination between these two regulatory deadlines and applies to all the existing CSAPR trading programs, whether administered under FIPs or approved SIPs, as well as the Texas SO_2 Trading Program.

EPA is making the changes to the NUSA allocation provisions, assurance provisions, and related deadlines effective as of the 2021 control period. EPA proposed to make the changes effective as of the 2023 control period, which is the first control period by which it would have been possible for states to fully replace the FIP requirements established in this action with a SIP revision. However, EPA also specifically requested comment on implementing the changes as of the 2021 control period. Having received no comment opposing the substance of the proposed revisions and no comment favoring implementation as of the 2023 control period, EPA is finalizing the amendments as of the 2021 control period in order to simplify the programs and clarify the regulations to the greatest extent possible.

Further details on the specific regulatory provisions that are affected by the revisions are provided in section IX.D. of the preamble.

c. Minor Corrections and Clarifications to Existing Regulations

EPA is implementing a small number of additional minor corrections and clarifications to the NUSA provisions in the existing CSAPR trading programs. First, EPA is amending the provisions that address the disposition of allowances that are determined to have been allocated incorrectly and that consequently are recalled and added to the NUSA for reallocation. The regulations that have applied through the 2020 control periods provided for the recalled allowances to be reallocated through the NUSA allocation process for the same control period for which the allowances were originally allocated incorrectly. Because some corrections may occur after the NUSA allocation process for a control period has already been completed, EPA is revising these provisions to also allow the recalled allowances to be reallocated as part of the NUSA allocation process for a subsequent control period.

Second, EPA is correcting the specific numbers of allowances identified as the NUSA amounts for several states under the existing CSAPR programs established in the CSAPR rulemaking.[218] Following the promulgation of the CSAPR regulations in August 2011, EPA issued two rules revising the amounts of the emissions budgets, NUSAs, and Indian country NUSAs for several states.[219] Subsequent to these rule revisions, EPA recalculated the allocations to individual existing units and published a notice of data availability establishing the new allocations.[220] However, because of rounding differences, in certain instances the sum of the recalculated allocations to the individual units in a state plus the amounts identified in the regulations for the NUSA and Indian country NUSA for the state does not exactly equal the state budget.[221] In this

[217] There are currently no analogous provisions in the Texas SO_2 Trading Program.

[218] This revision affects the CSAPR NO_X Annual, NO_X Ozone Season Group 1, SO_2 Group 1, and SO_2 Group 2 trading programs established in the CSAPR rulemaking but does not affect the CSAPR NO_X Ozone Season Group 2 trading program established in the CSAPR Update rulemaking.

[219] *See* 77 FR 10324 (February 21, 2012); 77 FR 34830 (June 12, 2012).

[220] *See* 79 FR 71674 (December 3, 2014).

[221] To date, EPA has addressed the rounding differences through the NUSA administration process by allocating whatever amounts of allowances remain in the states' budgets after allocations to existing units instead of allocating the specific amounts of allowances stated as the amounts of the states' NUSAs in the regulations. Thus, the amendments simply clarify the

final action, EPA is adjusting the amounts of the NUSAs identified in the regulations for control periods in future years up or down by the amount needed to eliminate the rounding differences. The sizes of the NUSA adjustments range from 1 to 17 allowances. These revisions do not affect the amounts of any state emissions budgets.

Third, EPA is adding provisions to the regulations for each of the existing CSAPR trading programs addressing the disposition of allowances held in the compliance accounts of sources in states that are no longer covered by those programs. Under the added provisions, EPA would identify or, if necessary, establish a general account controlled by each such source's owners and operators and would transfer any such allowances to that general account. The added provisions parallel analogous provisions that were proposed and are being finalized in this action to address the disposition of any CSAPR NO_X Ozone Season Group 2 allowances that may remain in the compliance accounts of sources in states covered by the new CSAPR NO_X Ozone Season Group 3 trading program after the various procedures governing conversion or recall of such allowances have been carried out.

Finally, EPA is making non-substantive revisions to the sections of the existing CSAPR trading program regulations that set forth the amounts of the budgets, new unit set-asides, and variability limits. The revisions clarify the regulations by indicating the specific control periods when such amounts no longer apply to the sources in a given state because the state's sources are no longer required to participate in that trading program.

Further details on the specific regulatory provisions that would be affected by the revisions are provided in section IX.D. of the preamble.

D. Submitting a SIP

States may replace a FIP with a SIP under the Clean Air Act at any time if the SIP is approved by EPA, *see* CAA section 110(c)(1)(B). EPA has established certain specialized provisions for replacing FIPs with SIPs within all of the CSAPR trading programs, including the use of so-called ''abbreviated SIPs'' and ''full SIPs,'' *see* 40 CFR 52.38(a)(4) and (5) and (b)(4), (5), (8), and (9); 40 CFR 52.39(e), (f), (h), and (i). Under the new or amended FIPs for the 12 states whose sources are required to participate in the new CSAPR NO_X Ozone Season Group 3 Trading Program, ''abbreviated'' and ''full'' SIP options continue to be available. An ''abbreviated SIP'' allows a state to submit a SIP revision that would establish state-determined allowance allocation provisions replacing the default FIP allocation provisions but leaves the remaining FIP provisions in place. A ''full SIP'' allows a state to adopt a trading program meeting certain requirements that would allow sources in the state to continue to use the EPA-administered trading program through an approved SIP revision, rather than a FIP. In addition, as under the CSAPR and the CSAPR Update, EPA is providing states with an opportunity to adopt state-determined allowance allocations for existing units for the second control period under this rule—in this case, the 2022 control period—through streamlined SIP revisions. *See* 76 FR 48326–48332 for additional discussion on full and abbreviated SIP options and 40 CFR 52.38(b).

1. SIP Option To Modify 2022 Allocations

As under the CSAPR and the CSAPR Update, EPA is allowing a state to submit a SIP revision establishing allowance allocations for existing units in the state for the second control period of the new requirements, in 2022, to replace the EPA-determined default allocations. This process is the same as the process used at the start of other CSAPR trading programs but with updated deadlines, *i.e.,* a state must submit a letter to EPA by June 29, 2021 indicating its intent to submit a complete SIP revision by September 1, 2021. The SIP would provide in an EPA-prescribed format a list of existing units and their allocations for the 2022 control period. If a state does not submit a letter of intent to submit a SIP revision, the EPA-determined default allocations will be recorded by July 29, 2021. If a state submits a timely letter of intent but fails to submit a SIP revision, the EPA-determined default allocations will be recorded by September 15, 2021. If a state submits a timely letter of intent followed by a timely SIP revision that is approved, the approved SIP allocations will be recorded by March 1, 2022.

2. SIP Option To Modify Allocations in 2023 and Beyond

For the 2023 control period and later, states in the CSAPR NO_X Ozone Season Group 3 Trading Program can modify the EPA-determined default allocations with an approved SIP revision. The SIP submittal deadline is December 1, 2021. The deadline for states to submit state-determined allocations beginning with the 2023 and 2024 control periods under an approved SIP would be June 1, 2022, and the deadline for EPA to record those allocations would be July 1, 2022. Similarly, a state can submit a SIP revision beginning with control periods in 2025 and beyond by December 1, 2022, with state allocations for the 2025 and 2026 control periods due June 1, 2023, and EPA recordation of the allocations by July 1, 2023. For the 2023 control period and later, SIPs can be full or abbreviated SIPs. As discussed in section VII.F.3. below, states will also have the option to expand applicability to include EGUs between 15 MWe and 25 MWe or, in the case of states subject to the NO_X SIP Call, large non-EGU boilers and combustion turbines. Inclusion of the large non-EGUs would serve as a mechanism to address the state's outstanding regulatory obligations under the NO_X SIP Call with respect to those sources, and the state would be allowed to allocate a defined quantity of additional Group 3 allowances because of the expanded set of sources. See above and 76 FR 48326–48332 for additional discussion on full and abbreviated SIP options and 40 CFR 52.38(b).

3. SIP Revisions That Do Not Use the New Group 3 Trading Program

States can submit SIP revisions to replace the FIP that achieve the necessary emission reductions but do not use the CSAPR NO_X Ozone Season Group 3 Trading Program. For a transport SIP revision that does not use the CSAPR NO_X Ozone Season Group 3 Trading Program, EPA would evaluate the transport SIP based on the particular control strategies selected and whether the strategies as a whole provide adequate and enforceable provisions ensuring that the necessary emission reductions (*i.e.,* reductions equal to or greater than what the Group 3 trading program will achieve) will be achieved. In order to best ensure its approvability, the SIP revision should include the following general elements: (1) A comprehensive baseline 2021 statewide NO_X emission inventory (which includes existing control requirements), which should be consistent with the 2021 emission inventory that EPA used to calculate the required state budget in this final action (unless the state can explain the discrepancy); (2) a list and description of control measures to satisfy the state emission reduction obligation and a demonstration showing when each measure would be in place to meet the 2021 and successive control periods; (3) fully-adopted state rules providing for such NO_X controls during

regulations and bring them into conformance with current practice.

the ozone season; (4) for EGUs greater than 25 MWe, monitoring and reporting under 40 CFR part 75, and for other units, monitoring and reporting procedures sufficient to demonstrate that sources are complying with the SIP (*see* 40 CFR part 51 subpart K (''source surveillance'' requirements)); and (5) a projected inventory demonstrating that state measures along with federal measures will achieve the necessary emission reductions in time to meet the 2021 compliance deadline. The SIPs must meet procedural requirements under the Act, such as the requirements for public hearing, be adopted by the appropriate state board or authority, and establish by a practically enforceable regulation or permit a schedule and date for each affected source or source category to achieve compliance. Once the state has made a SIP submission, EPA will evaluate the submission(s) for completeness. EPA's criteria for determining completeness of a SIP submission are codified at 40 CFR part 51 appendix V.

For further information on replacing a FIP with a SIP, see the discussion in the final CSAPR rulemaking (76 FR 48326).

4. No SIP Option for Additional States To Participate in the New Trading Program

EPA is not finalizing the proposed option that would have allowed EPA to approve a SIP submitted by a state whose sources are required to participate in the CSAPR NO_X Ozone Season Group 1 Trading Program (*i.e.,* Georgia) or a state whose sources are required to continue to participate in the CSAPR NO_X Ozone Season Group 2 Trading Program (Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin) requiring its sources to participate instead in the new Group 3 trading program. No comments were received indicating interest in such an option, and elimination of the option facilitates simplification and clarification of several areas of the regulations. A similar option was made available to Georgia in the CSAPR Update (with respect to the Group 2 trading program) to address possible concerns expressed by some commenters in the CSAPR Update rulemaking that if sources in Georgia were not allowed to trade with sources in other states, the allowances issued to the sources in Georgia would otherwise be of limited use. *See* 81 FR 74504, 74588 (former 40 CFR 52.38(b)(6)). Because EPA has already approved a SIP revision under which Georgia adopted a state program requiring its sources to participate in the Group 1 trading program, EPA in this action is simplifying and clarifying the regulations by removing the option for Georgia to instead adopt a SIP instead requiring its sources to participate in the Group 2 trading program. Relatedly, EPA is removing the provisions in the Group 2 trading program regulations setting forth the amounts of the emissions budget, new unit set-aside, and variability limit that would have applied if EPA had approved a SIP revision from Georgia's requiring the state's sources to participate in that program as well as the provisions in the Group 1 trading program regulations that would have converted all remaining Group 1 allowances into amounts of Group 2 allowances.

E. Title V Permitting

This final rule, like the CSAPR and the CSAPR Update, does not establish any permitting requirements independent of those under Title V of the CAA and the regulations implementing Title V, 40 CFR parts 70 and 71.[222] All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to ensure compliance with the applicable requirements of the CAA, including the requirements of the applicable SIP. CAA sections 502(a) and 504(a), 42 U.S.C. 7661a(a) and 7661c(a). The ''applicable requirements'' that must be addressed in title V permits are defined in the title V regulations (40 CFR 70.2 and 71.2 (definition of ''applicable requirement'')).

EPA anticipates that, given the nature of the units subject to this final rule and given that all of the units covered here are already subject to the CSAPR Update, most if not all of the sources at which the units are located are already subject to title V permitting requirements. For sources subject to title V, the interstate transport requirements for the 2008 ozone NAAQS that are applicable to them under the new or amended FIPs would be ''applicable requirements'' under title V and therefore must be addressed in the title V permits. For example, requirements concerning designated representatives, monitoring, reporting, and recordkeeping, the requirement to hold allowances covering emissions, the assurance provisions, and liability are ''applicable requirements'' that must be addressed in the permits.

Title V of the CAA establishes the basic requirements for state title V permitting programs, including, among other things, provisions governing permit applications, permit content, and permit revisions that address applicable requirements under final FIPs in a manner that provides the flexibility necessary to implement market-based programs such as the trading programs established by the CSAPR and the CSAPR Update and this final rule. 42 U.S.C. 7661a(b); 40 CFR 70.6(a)(8) & (10); 40 CFR 71.6(a)(8) & (10).

In the CSAPR and the CSAPR Update, EPA established standard requirements governing how sources covered by that rule would comply with title V and its regulations.[223] 40 CFR 97.506(d) and 97.806(d). For any new or existing sources under this final rule establishing the Group 3 trading program, identical title V compliance provisions would apply, just as they would have in the CSAPR NO_X Ozone Season Group 2 Trading Program. For example, the title V regulations provide that a permit issued under title V must include ''[a] provision stating that no permit revision shall be required under any approved . . . emissions trading and other similar programs or processes for changes that are provided for in the permit.'' 40 CFR 70.6(a)(8) and 71.6(a)(8). Consistent with these provisions in the title V regulations, in the CSAPR and the CSAPR Update, EPA included a provision stating that no permit revision is necessary for the allocation, holding, deduction, or transfer of allowances. 40 CFR 97.506(d)(1) and 97.806(d)(1). This provision is also included in each title V permit for an affected source. This final rule maintains the approach taken under the CSAPR and the CSAPR Update that allows allowances to be traded (or allocated, held, or deducted) without a revision to the title V permit of any of the sources involved.

Similarly, this final rule would also continue to support the means by which a source in a CSAPR trading program can use the title V minor modification procedure to change its approach for monitoring and reporting emissions, in certain circumstances. Specifically, sources may use the minor modification procedure so long as the new monitoring and reporting approach is one of the prior-approved approaches under the CSAPR and the CSAPR Update (*i.e.,* approaches using a

[222] Part 70 addresses requirements for state title V programs, and Part 71 governs the federal title V program.

[223] EPA has also issued a guidance document and template that includes instructions describing how to incorporate the applicable requirements into a source's Title V permit. *https://www3.epa.gov/airtransport/CSAPR/pdfs/CSAPR_Title_V_Permit_Guidance.pdf.*

continuous emission monitoring system under subparts B and H of Part 75, an excepted monitoring system under appendices D and E to Part 75, a low mass emissions excepted monitoring methodology under 40 CFR 75.19, or an alternative monitoring system under subpart E of part 75), and the permit already includes a description of the new monitoring and reporting approach to be used. *See* 40 CFR 97.506(d)(2) and 97.806(d)(2); 40 CFR 70.7(e)(2)(i)(B) and 40 CFR 71.7(e)(1)(i)(B). As described in EPA's 2015 guidance, the Agency suggests in its template that sources may comply with this requirement by including a table of all of the approved monitoring and reporting approaches under the CSAPR and the CSAPR Update trading programs in which the source is required to participate, and the applicable requirements governing each of those approaches. Inclusion of the table in a source's title V permit therefore allows a covered unit that seeks to change or add to its chosen monitoring and recordkeeping approach to easily comply with the regulations governing the use of the title V minor modification procedure.

Under the CSAPR and the CSAPR Update, in order to employ a monitoring or reporting approach different from the prior-approved approaches discussed previously, unit owners and operators must submit monitoring system certification applications to EPA establishing the monitoring and reporting approach actually to be used by the unit, or, if the owners and operators choose to employ an alternative monitoring system, to submit petitions for that alternative to EPA. These applications and petitions are subject to EPA review and approval to ensure consistency in monitoring and reporting among all trading program participants. EPA's responses to any petitions for alternative monitoring systems or for alternatives to specific monitoring or reporting requirements are posted on EPA's website.[224] EPA maintains the same approach in this final rule.

Consistent with EPA's approach under the CSAPR and the CSAPR Update, the applicable requirements resulting from the new and amended FIPs generally will have to be incorporated into affected sources' existing title V permits either pursuant to the provisions for reopening for cause (40 CFR 70.7(f) and 71.7(f)) or the standard permit renewal provisions (40 CFR 70.7(c) and 71.7(c)).[225] For sources newly subject to title V that are affected sources under the FIPs, the initial title V permit issued pursuant to 40 CFR 70.7(a) should address the final FIP requirements.

As was the case in the CSAPR and the CSAPR Update, the new and amended FIPs impose no independent permitting requirements and the title V permitting process will impose no additional burden on sources already required to be permitted under title V and on permitting authorities.

F. Relationship to Other Emission Trading and Ozone Transport Programs

1. Existing Trading Programs

This final rule ends the requirements for sources in certain states to participate in the existing CSAPR NO_X Ozone Season Group 2 Trading Program with respect to emissions occurring after 2020 and requires those same sources instead to participate in a new CSAPR NO_X Ozone Season Group 3 Trading Program with more stringent emissions budgets with respect to those emissions.[226] As discussed in section VII.C.4. above, the final rule lays out certain requirements associated with this transition, including provisions to accommodate an effective date sometime after the start of the 2021 ozone season, two mechanisms for the creation of limited quantities of Group 3 allowances available for use in the new Group 3 trading program in exchange for certain banked 2017–2020 Group 2 allowances, and the recall of 2021–2024 Group 2 allowances previously allocated to the sources in Group 3 states. In addition, in section VII.C.8. of this document, EPA describes certain features of the new Group 3 trading program that differ from the current features of the other CSAPR trading programs and that EPA is adopting as revisions to the other CSAPR trading programs, as well as a subset of those new features adopted as revisions to the similarly structured Texas SO_2 Trading Program. Beyond these items, nothing else in this rule affects any requirements for any source under the CSAPR NO_X Annual, SO_2 Group 1 or Group 2, or NO_X Ozone Season Group 1 or Group 2 trading programs or the Texas SO_2 Trading Program. These trading programs all remain in place and will continue to be administered by EPA.

2. Title IV Interactions

This final rule does not affect any Acid Rain Program requirements. Acid Rain Program SO_2 and NO_X requirements are established independently in Title IV of the Clean Air Act and will continue to apply independently of this final rule's provisions. Acid Rain sources will still be required to comply with Title IV requirements, including the requirement to hold Title IV allowances to cover SO_2 emissions after the end of each annual control period. EPA notes that the deadline by which sources affected under the Acid Rain Program must hold Title IV allowances is not affected by this final action and will continue to be 60 days after the end of the control period (*i.e.,* February 29 or March 1 of the following year). Thus, starting with the compliance deadlines in 2022 for the control periods in 2021, the Acid Rain Program deadline will be approximately three months earlier than the corresponding deadline by which sources affected under all the CSAPR trading programs and the Texas SO_2 Trading Program must hold allowances available for compliance under those programs, which will be June 1 of the year following the year of the control period, as discussed in sections VII.C.5 and VII.C.8.b.

3. NO_X SIP Call Interactions

States affected by both the NO_X SIP Call and this action will be required to comply with the requirements of both rules. This final rule requires NO_X ozone season emission reductions from EGUs larger than 25 MWe in many NO_X SIP Call states and at greater stringency than required by the NO_X SIP Call. Therefore, this final rule will achieve emission reductions sufficient to address the emission reduction requirements of the NO_X SIP Call for these large EGUs.

The NO_X SIP Call states used the NO_X Budget Trading Program to comply with the NO_X SIP Call requirements both for EGUs serving generators with a nameplate capacity greater than 25 MWe and for large non-EGU boilers and combustion turbines with a maximum design heat input greater than 250 mmBtu/hr. (In some states, EGUs

[224] *https://www.epa.gov/airmarkets/part-75-petition-responses.*

[225] A permit is reopened for cause if any new applicable requirements (such as those under a FIP) become applicable to an affected source with a remaining permit term of 3 or more years. If the remaining permit term is less than 3 years, such new applicable requirements will be added to the permit during permit renewal. *See* 40 CFR 70.7(f)(1)(I) and 71.7(f)(1)(I).

[226] The sources would remain subject to the Group 2 trading program with respect to emissions occurring in 2020 and earlier years and would also remain subject to various transitional provisions in the Group 2 trading program regulations, including both the provisions at 40 CFR 97.826(c) governing the conversion of certain banked 2017–2020 Group 2 allowances to a limited quantity of Group 3 allowances and the provisions at 40 CFR 97.811(d) governing the recall of certain previously recorded 2021–2024 Group 2 allowances. *See* section VII.C.4.

serving a generator with a nameplate capacity equal to or smaller than 25 MWe were also part of the NO_X Budget Trading Program as a carryover from the Ozone Transport Commission NO_X Budget Program.) However, EPA discontinued the NO_X Budget Trading Program after 2008 when implementation of the CAIR NO_X Ozone Season Trading Program began. Since that time, states have had to find appropriate alternative ways to continue to show compliance with the NO_X SIP Call, particularly for large non-EGUs. As one option, EPA has allowed states to modify the applicability provisions of the NO_X ozone season trading programs established under CAIR and later the CSAPR Update (although not the CSAPR) to include all NO_X Budget Trading Program units as a way to continue to meet the requirements of the NO_X SIP Call for these sources.

In this action, as under CAIR and the CSAPR Update, EPA is again allowing any NO_X SIP Call state affected by this final rule to voluntarily submit a SIP revision to expand the applicability of the CSAPR NO_X Ozone Season Group 3 Trading Program to include all NO_X Budget Trading Program units. As part of such a SIP revision, the state would be allowed to issue additional emission allowances capped at a level intended to preserve the stringency of the Group 3 trading program. Analysis shows that the NO_X Budget Trading Program units (mainly large non-EGU boilers, combustion turbines, and combined cycle units with a maximum design heat input greater than 250 mmBtu/hr) continue to emit well below their portions of the NO_X SIP Call state budgets. In order to ensure that the necessary amounts of EGU emission reductions occur for this final rule, the corresponding state ozone-season emissions budget amount can be increased by the lesser of: (1) The relevant non-EGU budget under the NO_X SIP Call or (2) the highest emissions of the relevant set of non-EGUs in the most recent 3 years. EPA believes that the environmental impact would be neutral using this approach, and hourly reporting of emissions under 40 CFR part 75 would continue. This option will address requests by states for help in determining an appropriate way to address the continuing NO_X SIP Call requirement for large boilers and turbines. If a state elects to bring its NO_X SIP Call non-EGUs into the Group 3 trading program, the program's assurance provisions continue to apply only to the EGUs covered by the program, and the amounts of the variability limits and assurance levels established for EGUs will remain unchanged.

The NO_X SIP Call generally requires that states choosing to rely on large EGUs and large non-EGU boilers and turbines for meeting NO_X SIP Call emission reduction requirements must establish a NO_X mass emissions cap on each source and require 40 CFR part 75, subpart H monitoring or alternative monitoring. As an alternative to source-by-source NO_X mass emission caps, a state may impose NO_X emission rate limits on each source and use maximum operating capacity for estimating NO_X mass emissions or may rely on other requirements that the state demonstrates to be equivalent to either the NO_X mass emission caps or the NO_X emission rate limits that assume maximum operating capacity. Collectively, the caps or their alternatives cannot exceed the portion of the state budget for those sources. *See* 40 CFR 51.121(f)(2) and (i)(1). If a state submits and EPA approves a SIP expanding the applicability to include all of the state's NO_X Budget Trading Program units in the CSAPR NO_X Ozone Season Group 3 Trading Program, the cap requirement would be met through the new budget and the monitoring requirement would be met through the trading program provisions, which require part 75 monitoring. Whether states choose to include NO_X Budget Trading Program units in the CSAPR NO_X Ozone Season Group 3 Trading Program through SIPs or not, EPA will work with states to ensure that NO_X SIP Call obligations continue to be met.

Comment: One commenter questioned the need to allow states to include large non-EGUs of the types that participated in the NO_X Budget Trading Program in the Group 3 trading program since current ozone season NO_X emissions from the large non-EGUs are a small fraction of historical emissions because many units have retired and the remaining ones have moved away from coal as the main fuel and are now largely natural gas-fired.

Response: EPA is not requiring states to include non-EGUs of the types that participated in the NO_X Budget Trading program in the Group 3 trading program. EPA continues to believe that allowing states to include these sources in the Group 3 trading program (or for some states, the Group 2 trading program) provides states a potentially useful option for continued compliance with ongoing NO_X SIP Call requirements.

Comment: A commenter questioned the methodology EPA would use to ensure that including these sources in the Group 3 trading program could be done in an environmentally neutral way. The commenter did not feel EPA had explained how that would work in practice.

Response: EPA has allowed the voluntary inclusion of these sources in the CSAPR programs for a number of years. The methodology for determining the amount of allowances to provide for the additional sources is capped at the lesser of recent historical actual emissions and the allocations from the original NO_X SIP Call program. This methodology accounts for the kinds of overall emission reductions that have occurred as cited by the commenter and holds emissions at actual levels, thus not allowing emissions increases from a decision by a state to voluntarily include these sources in the new CSAPR trading program.

VIII. Costs, Benefits, and Other Impacts of the Final Rule

In the Regulatory Impact Analysis for the Final Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (RIA), EPA estimated the health and climate benefits, compliance costs, and emissions changes that may result from the final rule for the analysis period 2021 to 2040. The estimated health and climate benefits and compliance costs are presented in detail in the RIA accompanying this final action. EPA notes that the estimated health and climate benefits and compliance costs are directly associated with optimizing NO_X removal by turning on and optimizing existing idled SCRs; optimizing existing idled selective non-catalytic reduction (SNCRs); and installing state-of-the-art combustion controls. The estimated health and climate benefits and compliance costs also result from a small amount of generation shifting as the power system adjusts to the regulatory requirements.

EPA analyzed this final action's emission budgets, using a uniform control stringency represented by $1,800 per ton of NO_X (2016$), as well as a more and a less stringent alternative. The more and less stringent alternatives differ in that they set different NO_X ozone season emission budgets for the affected EGUs. The less stringent alternative uses emission budgets that were developed using uniform control stringency represented by $500 per ton of NO_X (2016$). The more stringent alternative uses emission budgets that were developed using uniform control stringency represented by $9,600 per ton of NO_X (2016$). Table VIII.1 provides the projected 2021, 2025, 2030, 2035, and 2040 EGU emission reductions for the evaluated regulatory

control alternatives.[227] For additional information on emissions changes, see Table 4.5 in Chapter 4 of the RIA.

TABLE VIII.1—ESTIMATED 2021, 2025, 2030, 2035, AND 2040 [a] EGU EMISSIONS REDUCTIONS IN THE 12 STATES OF NO_X, SO_2, AND CO_2 AND MORE AND LESS STRINGENT ALTERNATIVES

[Tons] [b c]

	Final rule	More stringent alternative	Less stringent alternative
2021:			
NO_X (annual)	16,000	16,000	2,000
NO_X (ozone season)	16,000	16,000	2,000
SO_2 (annual) *	(*)	(*)	(*)
CO_2 (annual, thousand metric)	.....	.....	.....
2025:			
NO_X (annual)	21,000	37,000	2,000
NO_X (ozone season)	19,000	34,000	2,000
SO_2 (annual) *	(*)	(*)	(*)
CO_2 (annual, thousand metric)	5,000	14,000	4,000
2030:			
NO_X (annual)	16,000	27,000	2,000
NO_X (ozone season)	13,000	25,000	2,000
SO_2 (annual) *	(*)	(*)	(*)
CO_2 (annual, thousand metric)	8,000	19,000	6,000
2035:			
NO_X (annual)	15,000	26,000	2,000
NO_X (ozone season)	13,000	25,000	2,000
SO_2 (annual) *	(*)	(*)	(*)
CO_2 (annual, thousand metric)	8,000	19,000	6,000
2040:			
NO_X (annual)	14,000	25,000	2,000
NO_X (ozone season)	13,000	24,000	2,000
SO_2 (annual) *	(*)	(*)	(*)
CO_2 (annual, thousand metric)	4,000	13,000	3,000

[a] The 2021–2040 emissions reductions estimates are based on IPM projections for CO_2 and engineering analysis for annual and ozone season NO_X. SO_2 and $PM_{2.5}$ emissions were only partially analyzed. IPM was run for the following years: 2021, 2023, 2025, 2030, 2035, 2040, 2045 and 2050. For more information, see Chapter 4 and the Ozone Transport Policy Analysis Final Rule TSD.

[b] NO_X emissions are reported in English (short) tons; CO_2 is reported in metric tons.

[c] In addition to no annual SO_2 emissions reductions as shown in the table above, there are no annual direct $PM_{2.5}$ emissions changes.

* There are no annual SO_2 and $PM_{2.5}$ emissions reductions that come from turning on SCRs and SNCRs assuming that nothing else changes, but EPA did not analyze the effects on SO_2 and direct PM that may come from shifting power generation, for example from coal-fired power plants to gas-fired or other types of power plants. EPA does expect some changes in SO_2 and $PM_{2.5}$ emissions due to shifting of power generation.

EPA analyzed ozone-season NO_X emission reductions and the associated costs to the power sector of implementing the EGU NO_X ozone-season emissions budgets in each of the 12 states using the Integrated Planning Model (IPM) and its underlying data and inputs. The estimates of the changes in the cost of supplying electricity for the regulatory control alternatives are presented in Table VIII.2. Total costs continue to change in later IPM run years as the modeled system responds to projected demand growth and shifts in the power sector under the illustrative scenarios. For a detailed description of these cost trends, please see Chapter 4, Section 4.4.3 of the RIA.

TABLE VIII.2—NATIONAL COMPLIANCE COST ESTIMATES (MILLIONS OF 2016$) FOR THE REGULATORY CONTROL ALTERNATIVES

	Final rule	More-stringent alternative	Less-stringent alternative
2021–2025 (Annualized)	$10.0	$41.4	$(2.9)
2021–2040 (Annualized)	24.8	28.5	19.6
2021 (Annual)	5.1	5.2	1.6
2022 (Annual)	19.2	61.5	5.9
2023 (Annual)	19.2	61.5	5.9
2024 (Annual)	2.1	4.5	(14.9)
2025 (Annual)	1.6	4.0	(14.9)
2030 (Annual)	63.6	32.3	67.0

[227] EPA relied on Engineering Analysis to account for changes in NO_X (annual and ozone season), SO_2, and direct PM. While this approach captures the impact of generation shifting for NO_X emissions, it does not fully capture the impact of generation shifting for SO_2 and PM in complying with the budgets established in this final rule. In order to meet the court-ordered timeline for this rulemaking EPA prioritized fully capturing the impact of reductions from generation shifting on NO_X and CO_2, but did not account for the relatively small amount of SO_2 and primary PM emissions reductions that would likely occur due to generation shifting. Hence total benefits could be higher than those reported in this RIA. EPA relied on IPM estimates to capture changes in CO_2 emissions, which fully account for the impact of generation shifting.

TABLE VIII.2—NATIONAL COMPLIANCE COST ESTIMATES (MILLIONS OF 2016$) FOR THE REGULATORY CONTROL ALTERNATIVES—Continued

	Final rule	More-stringent alternative	Less-stringent alternative
2035 (Annual)	18.2	41.2	14.3
2040 (Annual)	8.8	134.0	18.9

"2021–2025 (Annualized)" reflects total estimated annual compliance costs levelized over the period 2021 through 2025 and discounted using a 4.25 real discount rate.[228] This does not include compliance costs beyond 2025. "2021–2040 (Annualized)" reflects total estimated annual compliance costs levelized over the period 2021 through 2040 and discounted using a 4.25 real discount rate. This does not include compliance costs beyond 2040. "2021 (Annual)" through "2040 (Annual)" costs reflect annual estimates in each of those years.

Tables VIII.3 and VIII.4 report the estimated economic value of avoided premature deaths and illness in each year relative to the baseline along with the 95% confidence interval. In each of these tables, for each discount rate and regulatory control alternative, multiple benefits estimates are presented reflecting alternative ozone and $PM_{2.5}$ mortality risk estimates. For additional information on health benefits, see Chapter 5 of the RIA.

TABLE VIII.3—TABLE VIII.3. ESTIMATED DISCOUNTED ECONOMIC VALUE OF OZONE-ATTRIBUTABLE PREMATURE MORTALITY AND ILLNESSES FOR THE FINAL POLICY SCENARIOS IN 2021

[95% Confidence Interval; millions of 2016$] [a] [b]

	Final rule	More stringent alternative	Less stringent alternative
3% Discount Rate	$230 ($58 to $480) [c] *and* $1,900 ($210 to $5,000) [d].	$260 ($88 to $520) [c] *and* $1,900 ($210 to $5,000) [d].	$22 ($6 to $47) [c] *and* $190 ($20 to $490) [d]
7% Discount Rate	$200 ($38 to $460) [c] *and* $1,700 ($170 to $4,500) [d].	$200 ($38 to $460) [c] *and* $1,700 ($170 to $4,500) [d].	$20 ($4 to $45) [c] *and* $170 ($17 to $440) [d]

[a] Values rounded to two significant figures. The two benefits estimates are separated by the word "and" to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates and should not be summed.

[b] We estimated changes in annual mean $PM_{2.5}$ and $PM_{2.5}$ -related benefits in 2024, but not 2021. As discussed in Chapter 4, in 2021, the only control measure expected to be adopted for compliance in the regulatory control alternatives is optimization of existing SCRs, and this measure will operate only during the ozone season. As discussed in Chapter 3, NO_X reductions in the ozone season provide minimal $PM_{2.5}$ benefits since $PM_{2.5}$ nitrate concentrations, which result from conversion of NO_X emissions to nitrate, are minimal during the warmer temperatures during the ozone season. Conversely, the conversion of nitrates to $PM_{2.5}$ is much greater in cooler (non-ozone season) months, and thus it becomes worthwhile to estimate $PM_{2.5}$ benefits from NO_X reductions in those months. In 2024, the presence of additional control measures that operate year-round and other changes in market conditions as a result of the rule lead to notable NO_X reductions in the winter months.

[c] Sum of ozone mortality estimated using the pooled Katsouyanni et al. (2009) and Zanobetti and Schwartz (2008) short-term risk estimate and the Di et al. (2017) long-term mortality risk estimate. As PM-related mortality quantified using risk estimates from the Di et al. (2017) and Turner et al. (2016) are within 5% of one another, in the interest of clarity and simplicity, we present the results estimated using the risk estimate from Di et al. (2017) alone.

[d] Sum of ozone mortality estimated using the long-term risk estimate and the Di et al. (2017) long-term mortality risk estimate. As PM-related mortality quantified using risk estimates from the Di et al. (2017) and Turner et al. (2016) are within 5% of one another, in the interest of clarity and simplicity, we present the results estimated using the risk estimate from Di et al. (2017) alone.

TABLE VIII.4—ESTIMATED DISCOUNTED ECONOMIC VALUE OF AVOIDED OZONE AND $PM_{2.5}$-ATTRIBUTABLE PREMATURE MORTALITY AND ILLNESSES FOR THE FINAL POLICY SCENARIO IN 2024

[95% Confidence Interval; millions of 2016$] [a] [b]

	Final rule	More stringent alternative	Less stringent alternative [b]
3% Discount Rate	$310 ($72 to $680) [c] *and* $2,400 ($250 to $6,200) [d].	$530 ($130 to $1,100) [c] *and* $4,200 ($450 to $11,000) [d].	$22 ($6 to $47) [c] *and* $190 ($20 to $490). [d]
7% Discount Rate	$280 ($48 to $640) [c] *and* $2,100 ($210 to $5,600) [d].	$470 ($84 to $1,100) [c] *and* $3,800 ($370 to $9,900) [d].	$20 ($4 to $45) [c] *and* $170 ($17 to $440). [d]

[a] Values rounded to two significant figures. The two benefits estimates are separated by the word "and" to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates and should not be summed.

[b] No PM-attributable benefits accrue for this scenario.

[c] Sum of ozone mortality estimated using the pooled Katsouyanni et al. (2009) and Zanobetti and Schwartz (2008) short-term risk estimate and the Di et al. (2017) long-term mortality risk estimate. As PM-related mortality quantified using risk estimates from the Di et al. (2017) and Turner et al. (2016) are within 5% of one another, in the interest of clarity and simplicity, we present the results estimated using the risk estimate from Di et al. (2017).

[d] Sum of ozone mortality estimated using the long-term risk estimate and the Di et al. (2017) long-term mortality risk estimate. PM-related mortality quantified using risk estimates from the Di et al. (2017) and Turner et al. (2016) are within 5% of one another. In the interest of clarity and simplicity, we present the results estimated using the risk estimate from Di et al. (2017) alone.

[228] This table reports compliance costs consistent with expected electricity sector economic conditions. An NPV of costs was calculated using a 4.25% real discount rate consistent with the rate used in IPM's objective function for cost-minimization. The NPV of costs was then used to calculate the levelized annual value over a 5-year period (2021–2025) and a 20-year period (2021–2040) using the 4.25% rate as well. Table VIII.7 reports the NPV of the annual stream of costs from 2021–2040 using 3% and 7% consistent with OMB guidance.

Table VIII.5 shows the estimated monetary value of the estimated changes in CO_2 emissions expected to occur over 2021–2040 for the final rule, the more-stringent alternative, and the less-stringent alternative. EPA estimated the dollar value of the CO_2-related effects for each analysis year between 2021 and 2040 by applying the SC–CO_2 estimates to the estimated changes in CO_2 emissions in the corresponding year under the regulatory options.[229] For additional information on climate benefits, see Chapter 5 of the RIA.

TABLE VIII.5—ESTIMATED TOTAL ANNUAL GLOBAL CLIMATE BENEFITS (2021–40) FROM CHANGES IN CO_2 EMISSIONS

[Millions of 2016$]

Regulatory alternative	Year	5% discount rate	3% discount rate	2.5% discount rate	3% discount rate (95th percentile)
Final	2021	0	1	1	2
	2022	46	143	206	434
	2023	94	290	417	882
	2024	102	311	444	946
	2025	109	331	473	1,011
	2030	128	373	525	1,146
	2035	98	273	380	838
	2040	127	340	467	1,043
More-Stringent Alternative	2021	1	2	3	7
	2022	76	237	341	720
	2023	156	480	689	1,460
	2024	204	623	892	1,898
	2025	254	771	1,100	2,350
	2030	323	939	1,322	2,885
	2035	316	878	1,222	2,698
	2040	383	1,025	1,410	3,146
Less-Stringent Alternative	2021	0	1	1	3
	2022	39	122	176	371
	2023	80	248	356	754
	2024	81	248	355	755
	2025	82	248	353	755
	2030	93	271	381	831
	2035	73	203	282	623
	2040	91	242	333	743

NOTE: We emphasize the importance and value of considering the benefits calculated using all four SC–CO_2 estimates. As discussed in Chapter 5 of the RIA and in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990 (IWG 2021), a consideration of climate benefits calculated using discount rates below 3 percent, including 2 percent and lower, are also warranted when discounting intergenerational impacts.

In Table VIII.6, EPA presents a summary of the benefits, costs, and net benefits of this final action and the more and less stringent alternatives for 2021. Table VIII.7 presents a summary of these impacts for this final action and the more and less stringent alternatives for 2025. Table VIII.8 presents a summary of these impacts for this final action and the more and less stringent alternatives for 2030. Discussion of the non-monetized health and welfare benefits from these pollutants is found in Chapter 5 of the RIA.

TABLE VIII.6—BENEFITS, COSTS, AND NET BENEFITS OF THE FINAL AND MORE AND LESS STRINGENT ALTERNATIVES FOR 2021 FOR THE U.S.

[Millions of 2016$][a b c]

	Final rule	More stringent alternative	Less stringent alternative
Health Benefits (3%)	$230 and $1,900	$260 and $1,900	$20 and $190.
Climate Benefits (3%)	$1	$2	$1.
Total Benefits	$230 and $1,900	$260 and $1,900	$20 and $190.
Costs	$5	$5	$2
Net Benefits	$230 and $1,900	$260 and $1,900	$20 and $190.
Health Benefits (7%)	$200 and $1,700	$200 and $1,700	$20 and $170.
Climate Benefits (3%)	$1	$2	$1.
Total Benefits	$200 and $1,700	$200 and $1,700	$20 and $170.
Costs	$5	$5	$2.

[229] Under the baseline, CO_2 emissions are projected to rise through 2025 and then taper off through 2035 and rise during the rest of the period, reflecting increasing demand growth, changing generation mix patterns and the impact of retiring capacity. CO_2 emissions reductions as a result of the modeled policies follow a similar trend, which causes total climate benefit estimates to oscillate over time.

TABLE VIII.6—BENEFITS, COSTS, AND NET BENEFITS OF THE FINAL AND MORE AND LESS STRINGENT ALTERNATIVES FOR 2021 FOR THE U.S.—Continued

[Millions of 2016$] [a b c]

	Final rule	More stringent alternative	Less stringent alternative
Net Benefits	$200 and $1,700	$200 and $1,700	$20 and $170.

[a] We focus results to provide a snapshot of costs and benefits in 2021, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates. The two benefits estimates are separated by the word "and" to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates and should not be summed.

[b] Benefits include those related to public health and climate. The health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. Climate benefits are based on changes (reductions) in CO_2 emissions and are calculated using four different estimates of the social cost of carbon ($SC–CO_2$) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For the presentational purposes of this table, we show the benefits associated with the average $SC–CO_2$ at a 3 percent discount rate, but the Agency does not have a single central $SC–CO_2$ point estimate. We emphasize the importance and value of considering the benefits calculated using all four $SC–CO_2$ estimates; the additional benefit estimates range from $0.24 million to $2.31 million in 2021 for the finalized option and are presented above in Table VIII.5. As discussed in Chapter 5, a consideration of climate benefits calculated using discount rates below 3 percent, including 2 percent and lower, are also warranted when discounting intergenerational impacts. The costs presented in this table are 2021 annual estimates for each alternative analyzed.

[c] Rows may not appear to add correctly due to rounding.

TABLE VIII.7—BENEFITS, COSTS, AND NET BENEFITS OF THE FINAL AND MORE AND LESS STRINGENT ALTERNATIVES FOR 2025 FOR THE U.S.

[Millions of 2016$] [a b c]

	Final Rule	More stringent alternative	Less stringent alternative
Health Benefits (3%)	$320 and $2,400	$540 and $4,200	$20 and $200.
Climate Benefits (3%)	$330	$770	$250.
Total Benefits	$650 and $2,700	$1,300 and $5,000	$270 and $450.
Costs	$2	$4	−$15.
Net Benefits	$650 and $2,700	$1,300 and $5,000	$280 and $460.
Health Benefits (7%)	$290 and $2,200	$490 and $3,800	$20 and $170.
Climate Benefits (3%)	$330	$770	$250.
Total Benefits	$620 and $2,500	$1,300 and $4,600	$270 and $420.
Costs	$2	$4	−$15.
Net Benefits	$620 and $2,500	$1,300 and $4,500	$280 and $430.

[a] We focus results to provide a snapshot of costs and benefits in 2025, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates. The two benefits estimates are separated by the word "and" to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates and should not be summed.

[b] Benefits include those related to public health and climate. The health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. Climate benefits are based on changes (reductions) in CO_2 emissions and are calculated using four different estimates of the social cost of carbon ($SC–CO_2$) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For the presentational purposes of this table, we show the benefits associated with the average $SC–CO_2$ at a 3 percent discount rate, but the Agency does not have a single central $SC–CO_2$ point estimate. We emphasize the importance and value of considering the benefits calculated using all four $SC–CO_2$ estimates; the additional benefit estimates range from $109 million to $1,011 million in 2025 for the finalized option and are presented above in Table VIII.5. As discussed in Chapter 5, a consideration of climate benefits calculated using discount rates below 3 percent, including 2 percent and lower, are also warranted when discounting intergenerational impacts. The costs presented in this table are 2025 annual estimates for each alternative analyzed.

[c] Rows may not appear to add correctly due to rounding.

TABLE VIII.8—BENEFITS, COSTS, AND NET BENEFITS OF THE FINAL AND MORE AND LESS STRINGENT ALTERNATIVES FOR 2030 FOR THE U.S.

[Millions of 2016$] [a b c]

	Final rule	More stringent alternative	Less stringent alternative
Health Benefits (3%)	$340 and $2,600	$590 and $4,600	$30 and $210.
Climate Benefits (3%).	$370	$940	$270.
Total Benefits	$710 and $3,000	$1,500 and $5,500	$300 and $480.
Costs	$64	$32	$67.
Net Benefits	$650 and $2,900	$1,500 and $5,500	$230 and $410.
Health Benefits (7%)	$330 and $2,500	$560 and $3,900	$20 and $180.
Climate Benefits (3%).	$370	$940	$270.
Total Benefits	$700 and $2,900	$1500 and $4,800	$290 and $450.

TABLE VIII.8—BENEFITS, COSTS, AND NET BENEFITS OF THE FINAL AND MORE AND LESS STRINGENT ALTERNATIVES FOR 2030 FOR THE U.S.—Continued

[Millions of 2016$] [a b c]

	Final rule	More stringent alternative	Less stringent alternative
Costs	$64	$32	$67.
Net Benefits	$640 and $2,800	$1,500 and $4,800	$220 and $380.

[a] We focus results to provide a snapshot of costs and benefits in 2030, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates. The two benefits estimates are separated by the word "and" to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates and should not be summed.

[b] Benefits include those related to public health and climate. The health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. Climate benefits are based on changes (reductions) in CO_2 emissions and are calculated using four different estimates of the social cost of carbon ($SC–CO_2$) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For the presentational purposes of this table, we show the benefits associated with the average $SC–CO_2$ at a 3 percent discount rate, but the Agency does not have a single central $SC–CO_2$ point estimate. We emphasize the importance and value of considering the benefits calculated using all four $SC–CO_2$ estimates; the additional benefit estimates range from $128 million to $1,146 million in 2030 for the finalized option and are presented above in Table VIII.5. As discussed in Chapter 5, a consideration of climate benefits calculated using discount rates below 3 percent, including 2 percent and lower, are also warranted when discounting intergenerational impacts. The costs presented in this table are 2030 annual estimates for each alternative analyzed.

[c] Rows may not appear to add correctly due to rounding.

In addition, Table VIII.9 presents estimates of the present value (PV) of the benefits and costs and the equivalent annualized value (EAV), an estimate of the annualized value of the net benefits consistent with the present value, over the twenty-year period of 2021 to 2040. The estimates of the PV and EAV are calculated using discount rates of 3 and 7 percent as directed by OMB's Circular A–4 and are presented in 2016 dollars discounted to 2021.

TABLE VIII.9—ESTIMATED HEALTH BENEFITS, CLIMATE BENEFITS, COMPLIANCE COSTS, AND NET BENEFITS OF THE FINAL RULE, 2021 THROUGH 2040

[Millions 2016$, discounted to 2021]

	3% Discount rate	7% Discount rate
Present Value:		
Health Benefits [b]	$4,800 and $37,000	$3,200 and $25,000.
Climate Benefits [b]	$4,400	$4,400.
Compliance Costs [c]	$370	$260.
Net Benefits	$8,800 and $41,000	$7,300 and $29,000.
Equivalent Annualized Value:		
Health Benefits	$320 and $2,500	$300 and $2,400.
Climate Benefits	$290	$290.
Compliance Costs	$25	$25.
Net Benefits	$590 and $2,800	$570 and $2,700.

[a] Numbers may not sum due to independent rounding. The two benefits estimates are separated by the word "and" to signify that they are two separate estimates. The estimates do not represent lower- and upper-bound estimates and should not be summed.

[b] The health benefits are associated with several point estimates and are presented at real discount rates of 3 and 7 percent. Climate benefits are based on changes (reductions) in CO_2 emissions and are calculated using four different estimates of the social cost of carbon ($SC–CO_2$) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For the presentational purposes of this table, we show the climate benefits associated with the average $SC–CO_2$ at a 3 percent discount rate, but the Agency does not have a single central $SC–CO_2$ point estimate. We emphasize the importance and value of considering the benefits calculated using all four $SC–CO_2$ estimates; the additional benefit estimates are presented above in Table VIII.5. As discussed in Chapter 5 of the Regulatory Impact Analysis for the Final Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, a consideration of climate benefits calculated using discount rates below 3 percent, including 2 percent and lower, are also warranted when discounting intergenerational impacts.

[c] To estimate these annualized costs, EPA uses a conventional and widely accepted approach that applies a capital recovery factor (CRF) multiplier to capital investments and adds that to the annual incremental operating expenses. Annual costs were calculated using a 4.25% real discount rate consistent with the rate used in IPM's objective function for cost-minimization.

As shown in Table VIII.9, the PV of the health benefits of this final rule, discounted at a 3-percent discount rate, is estimated to be about $4,800 million and $37,000 million, with an EAV of about $320 million and $2,500 million. At a 7-percent discount rate, the PV of the health benefits is estimated to be $3,200 million and $25,000 million, with an EAV of about $300 million and $2,400 million. The two health benefits estimates for each discount rate reflect alternative ozone and $PM_{2.5}$ mortality risk estimates. The PV of the climate benefits of this final rule, discounted at a 3-percent rate, is estimated to be about $4,400 million, with an EAV of about $290 million. The PV of the compliance costs, discounted at a 3-percent rate, is estimated to be about $370 million, with an EAV of about $25 million. At a 7-percent discount rate, the PV of the compliance costs is estimated to be about $260 million, with an EAV of about $25 million. See the RIA for additional discussion on costs, benefits, and impacts.

IX. Summary of Changes to the Regulatory Text for the Federal Implementation Plans and Trading Programs

This section describes the amendments to the regulatory text for the federal implementation plans and the trading program regulations related to the findings and remedy discussed elsewhere in this document. The primary amendments to the CFR are revisions to the CSAPR Update FIP provisions in 40 CFR part 52 and the creation of a new CSAPR NO_X Ozone Season Group 3 Trading Program in 40 CFR part 97, subpart GGGGG. In addition, amendments are being made to the regulations for the existing CSAPR NO_X Ozone Season Group 2 Trading Program to address the transition of the sources in certain states from the existing Group 2 trading program to the new Group 3 trading program. The existing regulations for the administrative appeal procedures in 40 CFR part 78 are also being revised to reflect the applicability of those procedures to decisions of the EPA Administrator under the new Group 3 trading program.

In addition to these primary amendments, certain revisions are being made to the regulations for the existing CSAPR trading programs and the Texas SO_2 Trading Program for conformity with the proposed provisions of the new Group 3 trading program, as discussed in section VII.C.8, and a cross-reference in the NO_X SIP Call regulations at 40 CFR 51.121 to the CSAPR Update FIP provisions is being updated. This section also describes a small number of minor additional proposed corrections and clarifications to the existing CFR text for the CSAPR trading programs, the Texas SO_2 Trading Program, and the appeal procedures. EPA has included documents in the docket for this final action showing all of the proposed revisions to part 52, part 78, and subparts AAAAA through FFFFF of part 97 in redline-strikeout format.

A. Amended CSAPR Update FIP Provisions

The CSAPR and CSAPR Update FIP provisions related to ozone season NO_X emissions are set forth in § 52.38(b) as well as sections of part 52 specific to each covered state. Amendments to § 52.38(b)(1) expand the overall set of CSAPR trading programs addressing ozone season NO_X emissions to include the new Group 3 trading program in subpart GGGGG of part 97 in addition to the current Group 1 and Group 2 trading programs in subparts BBBBB and EEEEE of part 97, respectively, while amendments to § 52.38(b)(2) identify the states whose sources are required under the new or amended FIPs to participate in each of the respective trading programs with regard to their emissions occurring in particular years. More specifically, for sources in the states that EPA finds have further good neighbor obligations with respect to the 2008 ozone NAAQS under this rule, new § 52.38(b)(2)(iv) ends the requirement to participate in the Group 2 trading program after the 2020 control period and new § 52.38(b)(2)(v) establishes the requirement to participate in the new Group 3 trading program starting with the 2021 control period.

The changes in FIP requirements set forth in § 52.38(b)(1) and (2) are substantively replicated in the state-specific CFR sections for each of the Group 3 states.[230] In each such CFR section, the current provision indicating that sources in the state are required to participate in the CSAPR NO_X Ozone Season Group 2 Trading Program is revised to end that requirement with respect to emissions after 2020 and to restore previously removed language indicating that participation by those sources in the Group 2 trading program was only a partial remedy for the state's underlying good neighbor obligation.[231] A further provision is added in each section indicating that sources in the state are required to participate in the CSAPR NO_X Ozone Season Group 3 Trading Program with respect to emissions starting in 2021. These added provisions do not contain the partial-remedy language, consistent with EPA's determinations in this rule that participation in the Group 3 trading program by a state's EGUs constitutes a full remedy for each such state's underlying good neighbor obligation. No changes are being made to the CFR sections for the remaining states whose sources currently participate in the Group 2 trading program. For these states, EPA's findings in this action are consistent with and therefore affirm the previous removal of language indicating that participation by the states' sources in the Group 2 trading program was only a partial remedy for the states' underlying good neighbor obligations.[232]

As under the CSAPR and the CSAPR Update, states subject to the FIPs under this rule have several options to revise their SIPs to modify or replace those FIPs while continuing to use the Group 3 trading program as the mechanism for meeting the states' good neighbor obligations. New § 52.38(b)(10), (11), and (12) establish options to replace allowance allocations for the 2022 control period, to adopt an abbreviated SIP revision for control periods in 2023 or later years, and to adopt a full SIP revision for control periods in later years, respectively. The first two options would modify certain provisions of the trading program as applied to a state's sources but leave the FIP in place, while the third option would replace the FIP with largely identical SIP requirements for sources to participate in a state Group 3 trading program integrated with the federal Group 3 trading program. These options closely replicate the analogous current options in § 52.38(b)(7), (8), and (9) with regard to the Group 2 trading program.

Like the analogous options under the Group 2 trading program, the abbreviated and full SIP options under the Group 3 trading program in new § 52.38(b)(11)(i) and (ii) and (b)(12)(i) and (ii) include options for a state to expand applicability to include certain non-EGU boilers and combustion turbines or smaller EGUs in the state that were previously subject to the NO_X Budget Trading Program. As discussed in section VII.F.3 of this document, in conjunction with an expansion to include the non-EGUs, the state would be able to also issue an additional amount of allowances. Revised § 52.38(b)(13)(ii)[233] clarifies that a SIP revision requiring a state's sources—EGUs or non-EGUs—to participate in the Group 3 trading program would satisfy the state's obligations to adopt control measures for such sources under the NO_X SIP Call.

The proposed option discussed in section VII.D.4 of this preamble for a state whose EGUs currently are required to participate the Group 1 or Group 2 trading program to submit a full SIP revision requiring its sources to instead participate in the Group 3 trading

[230] *See* §§ 52.731(b) (Illinois), 52.789(b) (Indiana), 52.940(b) (Kentucky), 52.984(d) (Louisiana), 52.1084(b) (Maryland), 52.1186(e) (Michigan), 52.1584(e) (New Jersey), 52.1684(b) (New York), 52.1882(b) (Ohio), 52.2040(b) (Pennsylvania), 52.2440(b) (Virginia), and 52.2540(b) (West Virginia).

[231] As discussed elsewhere in this document, EPA is correcting the approval of Kentucky's SIP revision that previously led to removal of the partial-remedy language for that state and instead issuing a disapproval. For the remaining states, the partial-remedy language was removed in the CSAPR Close-Out, which has been vacated.

[232] *See* §§ 52.54(b) (Alabama), 52.184 (Arkansas), 52.840(b) (Iowa), 52.882(b) (Kansas), 52.1284 (Mississippi), 52.1326(b) (Missouri), 52.1930 (Oklahoma), 52.2283(d) (Texas), and 52.2587(e) (Wisconsin).

[233] Redesignated from § 52.38(b)(10)(ii). The corresponding cross-reference in the NO_X SIP Call regulations at § 51.121(r)(2) is being updated to reflect the redesignation.

program is not being finalized. The similar option at existing § 52.38(b)(6) for Georgia to submit a full SIP revision requiring its sources to participate in the Group 2 trading program is being removed, along with the provisions governing the associated conversions of Group 1 allowances to Group 2 allowances at existing § 97.526(c)(2) and (3). Language addressing treatment of the converted Group 2 allowances under the Group 2 trading program's assurance provisions is removed from the definition of ''common designated representative's share'' at § 97.802.

The principal consequences of EPA's approval of a full SIP revision under § 52.38(b) are set forth in § 52.38(13) and (14). Revised § 52.38(b)(13)(i) [234] provides that—with exceptions indicated in other provisions of § 52.38(b)—full and unconditional approval of a state's full SIP revision under new § 52.38(b)(13) as correcting the SIP's deficiency that was the basis for a given FIP would cause the automatic withdrawal of the corresponding FIP requirements with regard to the sources in the state (except sources in Indian country with the borders of the state). New § 52.38(b)(14)(i), which addresses the Group 1 and Group 2 trading programs rather than the Group 3 trading program, identifies specific amended provisions of the federal Group 1 and Group 2 trading programs that will continue to apply to sources in a state Group 1 or Group 2 trading program implemented under a SIP provision in order to provide programmatic consistency across sources participating in the federal trading program and sources participating in integrated state trading programs. Revised § 52.38(b)(14)(ii),[235] which addresses the Group 3 trading program as well as the Group 1 and Group 2 trading programs, preserves EPA's ability to complete allowance allocations for any control period where such allocations were already underway when the SIP revision was approved. Provisions indicating these consequences of approval of a full SIP revision are also being added to the state-specific CFR sections.

The transition between the Group 2 trading program and the Group 3 trading program, as well as the transition between the Group 1 trading program and the Group 2 trading program or Group 3 trading program, is addressed in § 52.38(b)(14)(iii), which identifies several allowance-related provisions of the federal trading program regulations that continue to apply when the sources in a state transition to a different federal trading program (and also continue to apply under an integrated state trading program). New § 52.38(b)(14)(iii)(A) and revised § 52.38(b)(14)(iii)(B),[236] respectively, preserve EPA's authority under new § 97.526(c) to transfer Group 1 allowances among accounts under common control and EPA's authority under revised § 97.526(d) [237] to carry out conversions of Group 1 allowances to Group 3 allowances in all compliance accounts (as well as all general accounts) following the transition of a state's sources from the Group 2 trading program to the Group 3 trading program or following any SIP revision, adding to the regulations' existing coverage with respect to conversions of Group 1 allowances to Group 2 allowances. New § 52.38(b)(14)(iii)(C) and (D), respectively, preserve EPA's analogous authority under new § 97.826(c) and (d) with respect to transfers of Group 3 allowances among accounts and conversions of Group 2 allowances to Group 3 allowances in analogous circumstances. New § 52.38(b)(14)(iii)(E) similarly preserves EPA's authority under new § 97.811(d), concerning the recall of Group 2 allowances allocated to sources in Group 3 states for control periods after 2020. For clarity, revisions to the state-specific CFR sections substantively replicate the provisions of § 52.38(b)(14)(iii) indicating that the provisions of §§ 97.826(c) and (d) and 97.811(d) continue to apply following the transition of a state's sources from one trading program to another and following approval of any SIP revision under § 52.38(b).

New § 52.38(b)(16)(ii) provides that, after the control period in 2020, EPA will stop administering all Group 2 trading program provisions established under SIP revisions previously approved for Group 2 states whose sources are required to participate in the Group 3 trading program starting with the 2021 control period.[238]

Finally, new § 52.38(b)(17) contains updatable lists of states with approved SIP revisions to modify or replace the FIP requirements for the Group 3 trading program, supplementing the analogous lists at § 52.38(b)(15) and (b)(16)(i) [239] for the Group 1 and Group 2 trading programs.

B. New CSAPR NO_X Ozone Season Group 3 Trading Program Provisions

The Group 3 trading program regulations are being promulgated in a new subpart GGGGG of part 97 (40 CFR 97.1001 through 97.1035). Definitions, applicability, standard requirements, and other general provisions are set forth in §§ 97.1001 through 97.1008. State budgets and allocations of allowances to individual units are addressed in §§ 97.1010 through 97.1012, and provisions concerning designated representatives are covered in §§ 97.1013 through 97.1018. Management and use of allowances, including accounts, recordation, transfers, compliance, and banking, are addressed in §§ 97.1020 through 97.1028. Provisions for monitoring, recordkeeping, and reporting are set forth in §§ 97.1030 through 97.1035.

In general, the Group 3 trading program provisions parallel the existing Group 2 trading program regulations in subpart EEEEE of part 97 but reflect the amounts of the budgets, new unit set-asides, Indian country new unit set-asides, and variability limits established in this proposed rulemaking, all of which are set forth in new § 97.1010.

Under § 97.1006(c)(3)(i) and (ii), the obligations to hold one Group 3 allowance for each ton of emissions during the control period and to comply with the Group 3 trading program's assurance provisions begins with the 2021 control period, four years later than the analogous start dates for the Group 2 trading program. The deadlines for certifying monitoring systems under § 97.1030(b) and for beginning quarterly reporting under § 97.1034(d)(1) similarly are four years later than the analogous Group 2 trading program deadlines. The allowance recordation deadlines under § 97.1021 begin generally four years later than the comparable recordation deadlines under the Group 2 trading program but will reach the same schedule by July 1, 2023, which is the deadline for recordation of allowances for the control period in 2026 under both trading programs. However, under new § 97.1021(m), EPA will not record any allocations of Group 3 allowances to any unit at a source until all deductions of Group 2 allowances previously allocated to the units at the source for control periods after 2020 have been completed in accordance with new § 97.811(d).

Like the analogous Group 2 regulations, the Group 3 regulations allow a Group 3 allowance that was allocated to any account as a replacement for deducted Group 1 or Group 2 allowances to be used for all of

[234] Redesignated from § 52.38(b)(10)(i).

[235] Redesignated from § 52.38(b)(11)(i).

[236] Redesignated from § 52.38(b)(11)(ii).

[237] Redesignated from § 97.526(c).

[238] The states with approved SIP revisions that are affected under this provision are Indiana and New York.

[239] Redesignated from § 52.38(b)(12) and (13).

the purposes for which any other Group 3 allowance may be used. This is accomplished by adding references to §§ 97.526(d) [240] and 97.826(d)—the sections under which the conversions are carried out—to the definitions of ''allocate'' and ''CSAPR NO_X Ozone Season Group 3 allowance'' in § 97.1002 as well as the default order for deducting allowances for compliance purposes under § 97.1024(c)(2).

As is currently allowed under the Group 2 trading program, in order to facilitate NO_X SIP Call compliance, a state is allowed to expand applicability of the Group 3 trading program to include any sources that previously participated in the NO_X Budget Trading Program, and the state can also issue an amount of allowances beyond the state's Group 3 trading program budget if applicability is expanded to include large non-EGU boilers and turbines. Again, like the Group 2 trading program, the assurance provisions apply only to emissions from the sources subject to the Group 3 trading program before any such expansion. Accordingly, the assurance provisions in the proposed Group 3 trading program regulations exclude any additional units and allowances brought into the program through such a SIP revision. Specifically, the definitions of ''base CSAPR NO_X Ozone Season Group 3 unit'' and ''base CSAPR NO_X Ozone Season Group 3 source'' in § 97.1002 exclude units and sources that would not have been included in the program under § 97.1004, and all provisions related to the Group 3 assurance provisions reference only such ''base'' units and sources.

Sections 97.1016, 97.1018, and 97.1020(c)(1) and (5) reduce the administrative compliance burden for sources in the transition from the Group 2 trading program to the Group 3 trading program by providing that certain one-time or periodic submissions made for purposes of compliance with the Group 1 or Group 2 trading program will be considered valid for purposes of the Group 3 trading program as well. The submissions treated in this manner are a certificate of representation or notice of delegation submitted by a designated representative and an application for a general account or notice of delegation submitted by an authorized account representative.

Finally, in conjunction with promulgation of the new Group 3 trading program, EPA is amending the administrative appeal provisions in part 78 to make the procedures of that part applicable to determinations of the EPA Administrator under the new Group 3 trading program in the same manner as the procedures are applicable to similar determinations under the other CSAPR trading programs and previous EPA trading programs. These amendments add provisions for the Group 3 trading program to: The list in § 78.1(a)(1) of CFR sections (and analogous SIP revisions) generally giving rise to determinations subject to the part 78 procedures; the list in § 78.1(b) of certain determinations that are expressly subject to those procedures; the list in § 78.3(a) of the types of persons who may seek review under the procedures; the list in § 78.3(b) of persons who must be served regarding an appeal; the list in § 78.3(c) of the required contents of petitions for review; the list in § 78.3(d) of matters for which a right of review under part 78 is not provided; and the requirements in § 78.4(a)(1) as to who must sign a filing.

C. Transitional Provisions

As discussed in section VII.C.4., EPA is establishing four sets of transitional provisions to address the transition of sources that currently participate in the CSAPR NO_X Ozone Season Group 2 Trading Program but that, starting with the 2021 control period, will instead participate in the CSAPR NO_X Ozone Season Group 3 Trading Program.

The first set of transitional provisions addresses the practical issues associated with transitioning to a new trading program for the 2021 ozone season given that the effective date for the final action in this rulemaking will fall after the start of the ozone season on May 1, 2021. In order to avoid application of the more stringent emission reduction requirements proposed in this action retroactively before the final rule's effective date, this set of provisions makes supplemental allocations of Group 3 allowances to Group 3 sources in amounts collectively equal to the differences in the respective states' budgets under the Group 2 and Group 3 trading programs for the portion of the 2021 ozone season occurring before that date. The total amounts of supplemental allowances for each state will be determined under new § 97.1010(d). The amount of the allocation to each Group 3 unit will be the incremental amount that each unit would have received if the supplemental allowances had been allocated as part of the respective state's emissions budget for 2021, using the same allocation methodology EPA applies to compute the allocations to existing units from the emissions budget, as set forth in new § 97.1011(a)(3). In addition, to avoid retroactive application of the more stringent Group 3 assurance levels associated with the more stringent Group 3 budgets before the final rule's effective date, the assurance levels for each Group 3 state for the 2021 control period are increased by the product of 1.21 times the total amount of the supplemental allocations to the units in that state. The language implementing this provision is included in new § 97.1006(c)(2)(iii). New paragraph (2)(ii) of the definition of ''common designated representative's assurance level'' in § 97.1002 includes language that accounts for the allocations of supplemental allowances and the increment to the variability limit when apportioning responsibility for any exceedance of a state's assurance level among the owners and operators of the state's sources.

The second and third sets of transitional provisions under this final rule address conversions of Group 2 allowances (and in some instances Group 1 allowances) to Group 3 allowances for use in the new Group 3 trading program. These provisions are implemented largely through the addition of new § 97.826(d) to the Group 2 trading program regulations and revisions to the analogous conversion provisions in the Group 1 trading program regulations. Most notably, the one-time conversion of some banked 2017–2020 Group 2 allowances to an initial bank of Group 3 allowances is implemented through the provisions in new § 97.826(d)(1). These provisions set forth the schedule and mechanics for a one-time conversion of Group 2 allowances that were allocated for the control periods in 2017 through 2020 and that that remain banked following the completion of deductions for compliance for the 2020 control period. The conversion will be applied to all banked Group 2 allowances that as of the scheduled conversion date are held in any compliance account for a source located in a Group 3 state and, if necessary, to allowances held in general accounts, but will not be applied to allowances held in a compliance account for a source located in a Group 2 state.

The provisions setting forth the procedures for conversion of additional 2017–2020 Group 2 allowances to Group 3 allowances as a safety valve mechanism are in § 97.826(d)(2). Also, there is a possibility under the Group 2 trading program that some new Group 2 allowances may be issued to a Group 3 source after the conversions to Group 3 allowances have already taken place. Under § 97.826(d)(3), EPA may convert these allowances to Group 3 allowances as if they had been issued and recorded

[240] Redesignated from § 97.526(c).

before the general conversion to create an initial Group 3 bank.

Owners and operators of Group 3 sources generally may not retain banked Group 2 allowances in the compliance accounts for those sources after the date when the various transitional provisions have been carried out. If any such Group 2 allowances allocated for a control period before 2021 remain in the compliance account for a Group 3 source after April 1, 2022, new § 97.826(c) allows EPA to identify or, if necessary, establish a general account controlled by the source's owners and operators and to relocate the Group 3 allowances to that account. If obligations to hold Group 2 allowances arise later, such as an obligation to hold additional allowances because of excess emissions, new § 97.826(e) authorizes the use of Group 3 allowances to satisfy such obligations. When held for this purpose, a single Group 3 allowance could satisfy the obligation to hold more than one Group 2 allowance, as though the conversion were reversed. (As an alternative to using these provisions, the owners and operators of a Group 3 source could use Group 2 allowances held in a general account.)

Parallel amendments are being made to the provisions addressing conversions of Group 1 allowances to Group 2 allowances in § 97.526. Specifically, amendments to § 97.526(d)(1)(iv) [241] allow EPA to identify or, if necessary, establish a general account controlled by the source's owners and operators and to relocate to that new account any unclaimed Group 2 allowances resulting from the creation of an initial bank of Group 2 allowances during the first control period under the Group 2 trading program. In addition, there is a possibility under the Group 1 trading program that some new Group 1 allowances may be issued to a Group 3 source after the conversions of Group 1 to Group 2 allowances and then Group 2 to Group 3 allowances have already taken place. Under new § 97.526(d)(2)(ii), EPA may convert these Group 1 allowances to Group 3 allowances as if they had been issued and recorded before the general conversions. New § 97.526(e)(2) authorizes the use of Group 3 allowances to satisfy obligations to hold Group 1 allowances that may arise later, such as an obligation to hold additional allowances because of excess emissions.

The fourth set of transitional provisions under this final rule, which address the recall of Group 2 allowances previously allocated for control periods after 2020 to Group 3 sources, is implemented at new § 97.811(d). The scope of the allowance surrender requirements and assignment of responsibility for compliance are addressed in § 97.811(d)(1) and (2). The procedures EPA will follow to deduct allowances from sources' compliance accounts (or in exceptional circumstances, from general accounts) are set forth in § 97.811(d)(3) and (4). Clean Air Act violations for noncompliance with the surrender requirements are addressed at § 97.811(d)(5). Provisions addressing recordation and notifications are included at § 97.811(d)(6) and (7).

Finally, in § 78.1(b)(14) and (17), determinations of the EPA Administrator under §§ 97.526(d) and 97.826(d) regarding conversions of Group 1 and Group 2 allowances to Group 3 allowances and determinations of the EPA Administrator under § 97.811(d) regarding the recall of Group 2 allowances previously allocated to Group 3 units for control periods after 2020 are added to the list of determinations expressly subject to the part 78 procedures.

D. Conforming Revisions, Corrections, and Clarifications to Existing Regulations

As discussed in section VII.C.8, EPA is finalizing several amendments to the existing CSAPR trading programs and the Texas SO_2 Trading Program for conformity with the analogous provisions of the new Group 3 trading program.

The amendments providing for EPA to record allocations to existing units three instead of four years in advance of the control period at issue, starting with allocations for the 2025 control periods, are implemented in the existing CSAPR trading programs through revisions to §§ 97.421(f), 97.521(f), 97.621(f), 97.721(f), and 97.821(f).

The amendments switching from a two-round process to a one-round process for allocating allowances from new unit set-asides and Indian country new unit set-asides starting with the 2021 control periods are implemented in the existing CSAPR trading programs through revisions to §§ 97.411(b), 97.511(b), 97.611(b), 97.711(b), and 97.811(b) and 97.412, 97.512, 97.612, 97.712, and 97.812. The changes to the deadlines for EPA to record the allocations determined through the proposed one-round process are implemented through revisions to §§ 97.421(g) through (j), 97.521(g) through (j), 97.621(g) through (j), 97.721(g) through (j), and 97.821(g) through (j). The necessary coordinating revisions to dates included in the definitions of ''allowance transfer deadline'' and ''common designated representative'' are made in §§ 97.402, 97.502, 97.602, 97.702, and 97.802. The simplifications of the assurance provisions made possible by the changes in the new unit set-aside provisions are implemented through revisions to §§ 97.425(b), 97.525(b), 97.625(b), 97.725(b), and 97.825(b) as well as simplification of related definitions (''common designated representative's assurance level'') and removal of disused definitions (''allowable NO_X emission rate'', ''allowable SO_2 emission rate'', ''coal-derived fuel'', and ''heat rate'') in §§ 97.402, 97.502, 97.602, 97.702, and 97.802. The related extensions to the deadlines for states with approved SIP revisions to submit to EPA any state-determined allowance allocations are implemented through revisions to § 52.38(a)(4) and (5) and (b)(4), (5), (8) and (9) and § 52.39(e), (f), (h), and (i).

As discussed in section VII.C.8., EPA is replicating several of the deadline revisions proposed for the existing CSAPR trading programs in the similarly structured Texas SO_2 Trading Program in order to minimize unnecessary differences between the regulations for the programs. These revisions to the Texas SO_2 Trading Program regulations are implemented at § 97.902 (definitions of ''allowance transfer deadline'' and ''common designated representative''), 97.921(b) and (c), and 97.925(b).

The amendments authorizing EPA to reallocate any incorrectly allocated allowances through the new unit set-aside procedures for a control period after the correction is identified, instead of the new unit set-aside procedures for the control period for which the incorrect allocations were originally made, are implemented in §§ 97.411(c)(5), 97.511(c)(5), 97.611(c)(5), 97.711(c)(5), and 97.811(c)(5).

The amendments correcting the amounts of allowances in the new unit set-asides to address rounding differences from earlier amendments and removing the amounts of budgets, new unit set-asides, and variability limits that no longer apply or that would have applied only in the event of an optional SIP revision are implemented in §§ 97.410, 97.510, 97.610, 97.710, and 97.810.

The amendments addressing the transfer of allowances from compliance accounts to general accounts in instances where the sources in a state are no longer covered by a particular CSAPR trading program are

[241] Redesignated from § 97.526(c)(4).

implemented in new §§ 97.426(c), 97.526(c), 97.626(c), 97.726(c), and 97.826(c).

New § 52.38(a)(7)(i) and (b)(14)(i) and § 52.39(k)(1) identify the amended federal trading program provisions that EPA will implement in the existing state CSAPR trading programs to ensure consistent program implementation across all sources, whether the sources participate in the integrated trading programs under FIPs or approved SIP revisions.

EPA is making additional, non-substantive corrections and clarifications in various provisions of the existing CSAPR trading programs in subparts AAAAA through EEEEE of part 97, the Texas SO_2 Trading Program in subpart FFFFF of part 97, and the appeal procedures in part 78. The corrections and clarifications address minor typographical, wording, and formatting errors or update existing cross-references to reflect the new and redesignated provisions in §§ 52.38 and 52.39. In the NO_X SIP Call regulations at 40 CFR 51.121, a cross-reference to the CSAPR Update FIP provisions is being updated. In addition, the proposed corrections and clarifications include the following items:

- *Reorganization of the definitions of* ''*common designated representative's assurance level*'' *and* ''*common designated representative's share*'' *in §§ 97.402, 97.502, 97.602, 97.702, and 97.802.* The revisions clarify the definitions by relocating certain language between them and eliminating provisions that are no longer necessary because of the revisions to the new unit set-aside allocation procedures and the assurance provisions.
- *Addition of a definition of* ''*CSAPR NO_X Ozone Season Group 3 allowance*'' *in §§ 97.502 and 97.802 and addition of definitions of* ''*CSAPR NO_X Ozone Season Group 3 Trading Program*'' *and/or* ''*nitrogen oxides*'' *in §§ 97.402, 97.502, 97.602, 97.702, 97.802, and 97.902.* The new definitions of terms for the Group 3 allowances and trading program are needed for other provisions that reference the Group 3 allowances or trading program, while the definition of nitrogen oxides corrects a current omission. Nitrogen oxides are defined as ''all oxides of nitrogen except nitrous oxide (N_2O), expressed on an equivalent molecular weight basis as nitrogen dioxide (NO_2)'', which is consistent both with the definitions used in other EPA programs (*see, e.g.,* 40 CFR 51.50, 51.121(a), and 51.122(a)) and with historical practice in the existing CSAPR programs.
- *Revisions to the descriptions of units and control periods eligible for allocations of allowances from the new unit set-asides and Indian country new unit set-asides in §§ 97.412, 97.512, 97.612, 97.712, and 97.812.* The revisions do not substantively alter which units may receive allocations or the amounts of those allocations. Rather, the revisions more clearly express the existing requirements of the allocation procedures, under which EPA calculates a given unit's allocations considering only the unit's emissions that occur after its deadline for monitor certification (because any earlier emissions would not have occurred in a ''control period'' for that unit).
- *Revisions to the provisions for identification of specific allowances to be deducted for compliance in §§ 97.424(c), 97.524(c), 97.624(c), 97.724(c), 97.824(c), and 97.924(c).* The revisions clarify by referencing designated representatives instead of authorized account representatives, consistent with the existing requirement that the authorized account representative for a source's compliance account must be the designated representative for the source.
- *Addition of references in part 78 to the Texas SO_2 Trading Program.* The added references are analogous to the references that are being added to part 78 for the new Group 3 trading program. The applicability of the appeal procedures in part 78 to decisions of the EPA Administrator under the Texas SO_2 Trading Program has already been established in the provisions for that trading program at § 97.908, but the addition of references in part 78 clarifies the regulations.

X. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders (''E.O.'') can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This final action is an economically significant regulatory action and was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of the potential costs and benefits associated with this final action. This analysis, which is contained in the ''Regulatory Impact Analysis for the Final Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS'' [EPA–452–R–21–002], is available in the docket and is briefly summarized in section VIII of this preamble.

B. Paperwork Reduction Act (PRA)

This final action will not impose any new information collection burden under the PRA. This final action relocates certain existing information collection requirements for certain sources from subpart EEEEE of 40 CFR part 97 to a new subpart GGGGG of 40 CFR part 97, but neither changes the inventory of sources subject to information collection requirements nor changes any existing information collection requirements for any source. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667.

C. Regulatory Flexibility Act (RFA)

I certify that this final action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this final action are small businesses, small organizations, and small governmental jurisdictions.

EPA has lessened the impacts for small entities by excluding all units serving generators with capacities equal to or smaller than 25 MWe. This exclusion, in addition to the exemptions for cogeneration units and solid waste incineration units, eliminates the burden of higher costs for a substantial number of small entities located in the 12 states for which EPA is issuing FIPs. Within these states, EPA identified seven potentially affected EGUs that are owned by two entities that met the Small Business Administration's criteria for identifying small entities. Neither of these entities is projected to experience compliance costs that exceed 1 percent of generation revenues in 2021. EPA estimated the total net compliance cost to these two small entities to be approximately $0.04 million (in $2016).

EPA has concluded that there will be no significant economic impact on a substantial number of small entities (no SISNOSE) for this final rule. Details of this analysis are presented in the RIA, which is in the public docket.

D. Unfunded Mandates Reform Act (UMRA)

This final action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and will not significantly or uniquely affect small governments. Note that EPA expects the final rule to potentially have an impact on only one

category of government-owned entities (municipality-owned entities). This analysis does not examine potential indirect economic impacts associated with the final rule, such as employment effects in industries providing fuel and pollution control equipment, or the potential effects of electricity price increases on government entities. For more information on the estimated impact on government entities, refer to the RIA, which is in the public docket.

E. Executive Order 13132: Federalism

This final action does not have federalism implications. As finalized, this final action 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 has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

This final action implements EGU NO_X ozone season emission reductions in 12 eastern states (Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.). However, at this time, none of the existing or planned EGUs affected by this rule are owned by tribes or located in Indian country. This action may have tribal implications if a new affected EGU is built in Indian country. Additionally, tribes have a vested interest in how this rule affects air quality.

In developing the CSAPR, which was promulgated on July 6, 2011, to address interstate transport of ozone pollution under the 1997 ozone NAAQS, EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing that regulation to allow for meaningful and timely tribal input into its development. A summary of that consultation is provided at 76 FR 48346.

In that rulemaking, EPA received comments from several tribal commenters regarding the availability of the CSAPR allowance allocations to new units in Indian country. EPA responded to these comments by instituting Indian country new unit set-asides in the final CSAPR. In order to protect tribal sovereignty, these set-asides are managed and distributed by the federal government regardless of whether the CSAPR in the adjoining or surrounding state is implemented through a FIP or SIP. While there are no existing affected EGUs in Indian country covered by this action, the Indian country set-asides will ensure that any future new units built in Indian country will be able to obtain the necessary allowances. This rule maintains the Indian country new unit set-aside and adjusts the amounts of allowances in each set-aside according to the same methodology of the CSAPR and the CSAPR Update.

EPA consulted with tribal officials early in the process of developing this rule in accordance with the EPA Policy on Consultation and Coordination with Indian Tribes (May 2011). Before proposing this rule, EPA informed tribes of the rule's development on a National Tribal Air Association (NTAA) monthly air policy conference call that took place on June 25, 2020. In a separate NTAA call on October 20, 2020, EPA gave an overview of the proposed rule. In order to permit tribes to have meaningful and timely input into the development of the final rule, EPA offered consultation to tribal leaders. On October 30, 2020, EPA sent out letters via electronic mail to all 574 federally recognized tribes informing them of this action, offering consultation and requesting comment on this rulemaking. Courtesy copies of the letters were also sent via email to tribal air staff and tribal environmental professionals. EPA also sent courtesy copies to EPA's Regional Tribal Air Coordinators for notification to their tribes. To further provide tribes with the resources that they might require to engage in effective consultation, EPA also held an informational webinar on the rule on November 9, 2020. EPA did not receive any requests for consultation on this rule.

Comment: As part of the public comment process, EPA received comments from the National Tribal Air Association (NTAA), the Keweenaw Bay Indian Community, the Leech Lake Band of Ojibwe, and the Ute Mountain Ute Tribe Environmental Programs Department. Commenters felt that EPA has not complied with its tribal consultation obligations.

Response: EPA recognizes the critical importance of engagement with tribes and believes that it has provided tribes appropriate opportunity to provide input on this rule through NTAA calls, an informational webinar, and requests for consultation. EPA will continue to engage with tribes as part of the outreach strategy for this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements a previously promulgated health-based federal standard. This action's health and risk assessments are contained in Chapter 5 of the accompanying RIA. EPA believes that the ozone reductions, $PM_{2.5}$ reductions, and CO_2 reductions from this final rule will further improve children's health.

Comment: EPA received comment contending that EPA has failed to identify and assess the health risks to children from its decision to authorize continued interstate ozone pollution that contributes to violations of the 2008 and 2015 ozone air quality standards in downwind states. The commenter states that EPA has consistently recognized that children are disproportionately vulnerable to the environmental health risks of ozone and asserts that by authorizing continued pollution that will harm children, EPA has failed to ensure that its policies, programs, activities, and standards address these risks. The commenter claims that this rule is subject to section 2–202 of the Executive Order, which provides that ''covered regulatory action'' means ''any substantive action in a rulemaking'' that is ''likely to result in a rule that may'' (1) ''adversely affect in a material way . . . the environment, public health or safety, or State, local, or tribal governments or communities'' and (2) ''concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children.'' The commenter asserts that ozone pollution above the air quality standards EPA has adopted indisputably is a health risk that disproportionately affects children.

Response: According to section 2–202, a rulemaking is a ''covered regulatory action'' and thus subject to the Executive Order if the action is economically significant under Executive Order 12866 and involves an environmental health risk or safety risk that the agency has reason to believe may disproportionately affect children. While OMB has determined that this rulemaking is economically significant for purposes of Executive Order 12866,

the rulemaking does not meet the second criterion. The health-based standard at issue in this action has already been set in a prior rulemaking to promulgate the 2008 ozone NAAQS, wherein EPA did consider the effects of the standard under the Executive Order. *See* 73 FR 16436, 16506–07. Therefore, this action does not concern an environmental health or safety risk because EPA is simply evaluating how to implement an existing health standard.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA has prepared a Statement of Energy Effects for the regulatory control alternative as follows. The Agency estimates a much less than 1 percent change in retail electricity prices on average across the contiguous U.S. in 2021, and a much less than 1 percent reduction in coal-fired electricity generation in 2021 as a result of this rule. EPA projects that utility power sector delivered natural gas prices will change by less than 1 percent in 2021. For more information on the estimated energy effects, refer to the RIA, which is in the public docket.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Because of the need to meet the court-ordered signature deadline on this action, EPA did not have sufficient time to undertake a definitive assessment of the impacts of this final rule on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). EPA does not have information at this time that would suggest that this rule has the potential to result in disproportionately high and adverse human health or environmental impacts on vulnerable populations or overburdened communities; however, EPA is also not currently in a position to make a determination to this effect. In this section, EPA outlines the potential impacts of this rule and describes the analytical framework the agency intends to use to evaluate potential environmental justice concerns in future rulemakings.

Ozone pollution from power plants has both local and regional components: Part of the pollution in a given location—even in locations near emission sources—is due to emissions from nearby sources and part is due to emissions that are transported in the atmosphere over large distances and mix with emissions from other sources. Undertaken to implement CAA section 110(a)(2)(D), this action addresses that ''significant'' portion of contribution from upwind states to a nonattainment or maintenance receptor. As a result, the rule will reduce exposures to ozone in areas that are struggling to attain or maintain the 2008 ozone NAAQS. By addressing maintenance receptors, this rule reduces the likelihood that areas close to the level of the standard will exceed the current health-based standards in the future. The rule will result in incidental reductions in ozone in other areas, as well as reducing emissions of PM and other pollutants from EGUs that have both localized and distant impacts.

At the same time, this action alone cannot fully resolve any disproportionate impacts of ozone levels in downwind areas. Rather, it eliminates upwind state ''significant contribution,'' thus ameliorating those conditions and improving downwind air quality. While this rule is expected to reduce interstate ozone transport and thus to yield overall health and environmental benefits, further analysis would be required to assess potential environmental justice concerns—including, for example, whether the downwind air quality benefits are equitably distributed.[242]

It is important to note that nothing in this final rule allows sources to violate their title V permit or any other federal, state, or local emissions or air quality requirements. Moreover, CAA section 110(a)(2)(D) addresses transport of criteria pollutants between states and is only one of many provisions of the CAA that provide EPA, states, and local governments with authorities to reduce exposure to ozone in communities. These legal authorities work together to reduce exposure to these pollutants in communities, including for minority, low-income, and tribal populations, and provide substantial health benefits to both the general public and sensitive sub-populations.

EPA informed tribal communities of its development of this rule on a National Tribal Air Association—EPA air policy conference call on June 25, 2020. EPA also held two informational webinars for tribes and environmental justice communities on November 9, 2020 and November 10, 2020, respectively, where EPA presented an overview of the rule and provided tribes and communities with resources that they might require to engage in the public comment process.

While a court-ordered deadline precludes a fulsome environmental justice analysis for this rulemaking, this section describes a framework for assessing potential environmental justice concerns for future rulemakings based on EPA's *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (2016). Going forward, EPA is committed to conducting environmental justice analysis for rulemakings based on a framework similar to what is outlined here, in addition to investigating ways to further weave environmental justice into the fabric of the rulemaking process including through enhanced meaningful engagement with environmental justice communities.[243]

When assessing the potential for disproportionately high and adverse health or environmental impacts of regulatory actions on minority populations, low-income populations, tribes, and/or indigenous peoples, EPA strives to answer three broad questions: (1) Is there evidence of potential environmental justice concerns in the baseline (the state of the world absent the regulatory action)? Assessing the baseline will allow EPA to determine whether pre-existing disparities are associated with the pollutant(s) under consideration (*e.g.,* if the effects of the pollutant(s) are more concentrated in some population groups). (2) Is there evidence of potential environmental justice concerns for the regulatory option(s) under consideration? Specifically, how are the pollutant(s) and its effects distributed for the regulatory options under consideration?

[242] A potential environmental justice concern is ''the actual or potential lack of fair treatment or meaningful involvement of minority populations, low-income populations, tribes, and indigenous peoples in the development, implementation and enforcement of environmental laws, regulations and policies.'' EPA, Guidance on Considering Environmental Justice During the Development of Regulatory Actions (May 2015).

[243] While not the focus of this discussion, meaningful involvement intersects with analytic considerations in several important respects. The use of plain language to explain the regulatory analysis can make it easier for the public to understand what was done and submit comments. Requests for information on unique exposure pathways or end points of concern, as well as data sources, early in the regulatory process can improve the analysis of potential EJ concerns. Specific aspects of the regulatory design may also make it easier to monitor and share information with the public once the rulemaking is in place.

And, (3) do the regulatory option(s) under consideration exacerbate or mitigate environmental justice concerns relative to the baseline? [244] It is not always possible to quantitatively assess all three questions. For instance, in some regulatory contexts it may only be possible to quantitatively characterize the baseline due to data and modeling limitations.

A good starting point for assessing the need for a more detailed environmental justice analysis is to review the available evidence from the published literature and from community input on what factors may make population groups of concern more vulnerable to adverse effects (*e.g.,* unique pathways; cumulative exposure from multiple stressors; behavioral, biological, or environmental factors that increase susceptibility). It is also important to evaluate the data and methods available for conducting an environmental justice analysis. A screening-level analysis is recommended to help characterize population groups of concern in the context of a specific rulemaking, as well as identify potential comparison groups, data, methods and analytical needs.

Current EPA guidance does not prescribe or recommend a specific approach or methodology for conducting screening-level analysis,[245] though a key consideration is consistency with the assumptions underlying other parts of the regulatory analysis when evaluating the baseline and regulatory option(s). Even without a more in-depth analysis of potential environmental justice concerns, the screening-level analysis can be useful for describing the proximity of regulated sources to minority populations, low-income populations, and/or indigenous peoples; the number of sources that may be impacting population groups of concern; the nature and amounts of pollutant(s) that may impact population groups of concern; unique exposure pathways associated with the regulated pollutant(s); stakeholder concern(s) about the potential regulatory action; and any history of environmental justice concerns associated with the pollutant(s) being regulated.

In cases where further investigation of potential environmental justice concerns is warranted, a variety of techniques are available. These techniques are briefly described below, and EPA refers the reader to EPA's *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (2016) for more detailed discussion of each approach including their advantages and limitations. The approach taken to conduct environmental justice analysis is informed by the quantitative information generated for the risk and benefits analysis conducted in support of the rulemaking and the analytic opportunities that provides. Building in consideration of environmental justice at the early stages of the analysis—for instance, to ensure that unique exposure pathways are adequately characterized—thus is of paramount importance. When data allow, it is also informative to characterize the distribution of risks, exposures, or outcomes within each population group, not just average impacts, with particular attention paid to the characteristics of populations at the high end of the distribution. Qualitative approaches may also prove a useful complement to quantitative assessment in cases where either data are not available at a sufficiently disaggregated level to conduct distributional analysis or when they offer insight into considerations omitted from quantitative assessment (*e.g.,* how environmental quality interacts with people's values, behaviors, motivations, or cultures).

Two of the most straightforward analytic approaches to environmental justice analysis are summary statistics and visual displays. Summary statistics can be used to characterize the distribution of health and environmental impacts (*e.g.,* county- or census-tract level average) for population groups of concern relative to an appropriate comparison group (*e.g.,* national or state average). Visual displays such as maps can communicate how the geographic distribution of pollution overlaps with that of population groups of concern and therefore can identify potential areas where additional outreach, data collection, or monitoring may be warranted.

More sophisticated analytic approaches may also be possible when data allow. Proximity-based analysis uses the distance to polluting source(s) as a proxy for risk or exposure. Specifically, it compares the demographic and socioeconomic characteristics of population groups relatively close (*e.g.,* within a certain distance or census tract) to the source of pollution to those living further away. Simple statistical tests are then used identify whether, on average, there are statistically discernible differences between those living close to versus further away from the polluting sources. The validity of the proximity-based approach rests on the appropriateness of several assumptions, such as that the effects of the pollutant(s) occur only within the designated area and that all individuals residing close by are equivalently exposed. When data are available, it may also be possible to conduct risk or exposure analysis to evaluate potential environmental justice concerns. Emissions or other ambient concentration data can be combined with fate and transport modeling. In cases where disaggregated information is available on the types of activities that result in differences in exposure across population groups of concern, it may be possible to characterize differences in health effects due to the regulatory action. It also may be possible to combine exposure data with information on differences in risk across population groups.

K. Congressional Review Act

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is a ''major rule'' as defined by 5 U.S.C. 804(2), because OMB has determined that this rule is ''economically significant.''

L. Determinations Under CAA Section 307(b)(1) and (d)

Section 307(b)(1) of the CAA indicates which federal courts of appeals are the proper forum for petitions for review of final actions by EPA under the CAA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit for: (i) ''Any nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) locally or regionally applicable final action if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a

[244] Differential impacts on population groups of concern can only be identified in relation to a comparison group. A comparison group can be defined in multiple ways, for instance in terms of individuals with similar socioeconomic characteristics located at a broader geographic level or with different socioeconomic characteristics within an affected area. The goal is to select a comparison group that allows one to identify how the effects of the regulation vary by race, ethnicity, and income separate from other systematic differences across groups or geographic areas.

[245] S*ee* EPA, Guidelines for Preparing Economic Analyses (Dec. 2010, rev. May 2014), available at *https://www.epa.gov/sites/production/files/2017-08/documents/ee-0568-50.pdf*; EPA, Guidance on Considering Environmental Justice During the Development of Regulatory Actions (May 2015), available at *https://www.epa.gov/sites/production/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf*; EPA, Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (June 2016) available at *https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf*.

determination.'' For locally or regionally applicable final actions, the CAA reserves to EPA complete discretion whether to invoke the exception in (ii).

This final action is ''nationally applicable'' within the meaning of CAA section 307(b)(1). In the alternative, the Administrator is exercising the complete discretion afforded to her under the CAA to make and publish a finding that this action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1).[246] This final action implements the good neighbor provision in 21 states, 6 EPA regions, and 6 federal appellate court circuits. The final action applies a uniform, nationwide analytical method and interpretation of CAA section 110(a)(2)(D)(i)(I) across these states in a single final action, and the final action is based on a common core of legal, technical, and policy determinations.[247] The rule is based on a common core of statutory and case law analysis, factual findings, and policy determinations concerning the transport of ozone-precursor pollutants from the different states subject to it, as well as the impacts of those pollutants and the impacts of options to address those pollutants in yet other states. In particular, in this action, EPA is applying its 4-step analytic framework to implement the good neighbor provision across these states, using a consistent set of policy and analytical determinations. These determinations include findings identifying downwind nonattainment and maintenance receptors and upwind states linked to those receptors; the use of a common multi-factor test to determine which upwind-state contributions to nonattainment and maintenance receptors are ''significant'' and must be eliminated; and the promulgation of emissions budgets, an integrated interstate emissions trading program, and a regionally consistent set of other compliance requirements for EGUs across twelve states to implement the necessary emission reductions.

For these reasons, this final action is nationally applicable. Alternatively, the Administrator is exercising the complete discretion afforded to her by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1). Pursuant to CAA section 307(b), any petitions for review of this final action must be filed in the D.C. Circuit within 60 days from the date this final action is published in the **Federal Register**.

This final action is subject to the provisions of section 307(d). CAA section 307(d)(1)(B) provides that section 307(d) applies to, among other things, ''the promulgation or revision of an implementation plan by the Administrator under [CAA section 110(c)].'' 42 U.S.C. 7407(d)(1)(B). This final action promulgates new and revised federal implementation plans pursuant to the authority of section 110(c). To the extent any portion of this rulemaking is not expressly identified under section 307(d)(1)(B), the Administrator has determined that the provisions of section 307(d) apply to this action. *See* CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to ''such other actions as the Administrator may determine'').

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

40 CFR Part 78

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: March 15, 2021.

Michael Regan,

Administrator.

For the reasons stated in the preamble, EPA amends parts 51, 52, 78, and 97 of title 40 of the Code of Federal Regulations as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart G—Control Strategy

§ 51.121 [Amended]

■ 2. In § 51.121, amend paragraph (r)(2) by removing ''40 CFR 52.38(b)(10)(ii),'' and adding in its place ''40 CFR 52.38(b)(13)(ii),''.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 3. The authority citation for part 52 continues to read as follows:

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

Subpart A—General Provisions

■ 4. Amend § 52.38 by:
■ a. Amending paragraph (a) by revising the paragraph heading;;
■ b. Adding a paragraph heading to paragraph (a)(1) and removing ''(NO_X).'' and adding in its place ''(NO_X), except as otherwise provided in this section.'';
■ c. Adding a paragraph heading to paragraph (a)(2);
■ d. Adding a paragraph heading to paragraph (a)(3) introductory text and removing ''Notwithstanding the provisions of paragraph (a)(1) of this section, a State'' and adding in its place ''A State'';
■ e. Revising paragraph (a)(4) introductory text;
■ f. In paragraph (a)(4)(i)(A), removing the period at the end of the paragraph and adding in its place a semicolon;
■ g. In paragraph (a)(4)(i)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 1 to this paragraph;'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';
■ h. In paragraph (a)(4)(i)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2021, or by April 1 of the year following the

[246] In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including her judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

[247] In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

control period, for a control period in 2021 or thereafter; and'';
■ i. Adding a paragraph heading to paragraph (a)(5) introductory text and removing ''Notwithstanding the provisions of paragraph (a)(1) of this section, a State'' and adding in its place ''A State'';
■ j. In paragraph (a)(5)(i)(A), removing the period at the end of the paragraph and adding in its place a semicolon;
■ k. In paragraph (a)(5)(i)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 2 to this paragraph;'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';
■ l. In paragraph (a)(5)(i)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and'';
■ m. In paragraph (a)(5)(v), adding ''and'' after the semicolon at the end of the paragraph;
■ n. Adding a paragraph heading to paragraph (a)(6) and removing ''Following promulgation'' and adding in its place ''Except as provided in paragraph (a)(7) of this section, following promulgation'';
■ o. Revising paragraph (a)(7);
■ p. Adding a paragraph heading to paragraph (a)(8) introductory text;
■ q. Revising the paragraph heading to paragraph (b);
■ r. Revising paragraph (b)(1);
■ s. Adding a paragraph heading to paragraph (b)(2);
■ t. In paragraph (b)(2)(ii), removing ''2016 only:'' and adding in its place ''2016 only, except as provided in paragraph (b)(14)(iii) of this section:'';
■ u. Revising paragraph (b)(2)(iii);
■ v. Adding paragraphs (b)(2)(iv) and (v);
■ w. Adding a paragraph heading to paragraph (b)(3) introductory text and removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'';
■ x. Revising paragraph (b)(4) introductory text;
■ y. In paragraph (b)(4)(ii)(A), removing the period at the end of the paragraph and adding in its place a semicolon;
■ z. In paragraph (b)(4)(ii)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 3 to this paragraph;'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';
■ aa. In paragraph (b)(4)(ii)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and'';
■ bb. Adding a paragraph heading to paragraph (b)(5) introductory text and removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'';
■ cc. In paragraph (b)(5)(ii)(A), removing the period at the end of the paragraph and adding in its place a semicolon;
■ dd. In paragraph (b)(5)(ii)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 4 to this paragraph;'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';
■ ee. In paragraph (b)(5)(ii)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and'';
■ ff. In paragraph (b)(5)(vi), adding ''and'' after the semicolon at the end of the paragraph;
■ gg. Removing and reserving paragraph (b)(6);
■ hh. Adding a paragraph heading to paragraph (b)(7) introductory text, removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'', and adding ''or (iv)'' after ''(b)(2)(iii)'';
■ ii. Revising paragraphs (b)(8) introductory text and (b)(8)(ii);
■ jj. In paragraph (b)(8)(iii)(A)(*2*), removing the period at the end of the paragraph and adding in its place a semicolon;
■ kk. In paragraph (b)(8)(iii)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 5 to this paragraph;'', adding a heading to the table, and revising the table entry for ''2025 and any year thereafter'';
■ ll. In paragraph (b)(8)(iii)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and'';
■ mm. In paragraph (b)(8)(iii)(D), removing ''§ 97.526(c)'' and adding in its place ''§ 97.526(d)'';
■ nn. Adding a paragraph heading to paragraph (b)(9) introductory text, removing ''Notwithstanding the provisions of paragraph (b)(1) of this section, a State'' and adding in its place ''A State'', and adding ''or (iv)'' after ''(b)(2)(iii)'' each time ''(b)(2)(iii)'' appears;
■ oo. Revising paragraph (b)(9)(ii);
■ pp. In paragraph (b)(9)(iii)(A)(*2*), removing the period at the end of the paragraph and adding in its place a semicolon;
■ qq. In paragraph (b)(9)(iii)(B), removing ''the following dates:'' and adding in its place ''the dates in Table 6 to this paragraph;'', adding a heading to the table, and revising the table entry for ''2025 and any year thereafter'';
■ rr. In paragraph (b)(9)(iii)(C), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and'';
■ ss. In paragraph (b)(9)(iii)(D), removing ''§ 97.526(c)'' and adding in its place ''§ 97.526(d)'';
■ tt. In paragraph (b)(9)(vii), adding ''and'' after the semicolon at the end of the paragraph;
■ uu. Redesignating paragraphs (b)(10) through (13) as paragraphs (b)(13) through (16), respectively, and adding new paragraphs (b)(10) through (12), and further redesignating newly redesignated paragraphs (b)(16)(ii) through (iv) as paragraphs (b)(16)(i)(A) through (C), respectively;
■ vv. Revising newly redesignated paragraph (b)(13) introductory text;
■ ww. In newly redesignated paragraph (b)(13)(i), removing ''The provisions of paragraph (b)(2)(i) or (iii)'' and adding in its place ''Except as provided in paragraph (b)(14) of this section, the provisions of paragraph (b)(2)(i), (iii), (iv), or (v)'';
■ xx. In newly redesignated paragraph (b)(13)(ii), adding ''or (b)(12)(ii)'' after ''(b)(9)(ii)'' and removing ''such sources.'' and adding in its place ''such sources, provided that the Administrator and the State continue to carry out their respective functions under such regulations.'';
■ yy. Revising newly redesignated paragraph (b)(14);
■ zz. Adding a paragraph heading to newly redesignated paragraph (b)(15) introductory text;
■ aaa. Revising newly redesignated paragraphs (b)(16) introductory text and (b)(16)(i);
■ bbb. In newly redesignated paragraph (b)(16)(i)(C), removing ''(b)(2)(iii),'' and adding in its place ''(b)(2)(iii) or (iv),''; and

■ ccc. Adding paragraphs (b)(16)(ii) and (b)(17).

The additions and revisions read as follows:

§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?

(a) *NO_X annual emissions*—(1) *General requirements.* * * *

(2) *Applicability of CSAPR NO_X Annual Trading Program provisions.* * * *

* * * * *

(3) *State-determined allocations of CSAPR NO_X Annual allowances for 2016.* * * *

* * * * *

(4) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR NO_X Annual Trading Program.* A State listed in paragraph (a)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart AAAAA of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

(i) * * *

(B) * * *

TABLE 1 TO PARAGRAPH (a)(4)(i)(B)

Year of the control period for which CSAPR NO_X Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(5) *Full SIP revisions adopting State CSAPR NO_X Annual Trading Programs.* * * *

(i) * * *

(B) * * *

TABLE 2 TO PARAGRAPH (a)(5)(i)(B)

Year of the control period for which CSAPR NO_X Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(6) *Withdrawal of CSAPR FIP provisions relating to NO_X annual emissions.* * * *

(7) *Continued applicability of certain federal trading program provisions for NO_X annual emissions.* (i) Notwithstanding the provisions of paragraph (a)(6) of this section or any State's SIP, when carrying out the functions of the Administrator under any State CSAPR NO_X Annual Trading Program pursuant to a SIP revision approved under this section, the Administrator will apply the following provisions of this section, as amended, and the following provisions of subpart AAAAA of part 97 of this chapter, as amended, with regard to the State and any source subject to such State trading program:

(A) The definitions in § 97.402 of this chapter;

(B) The provisions in § 97.410(a) of this chapter (concerning in part the amounts of the new unit set-asides);

(C) The provisions in §§ 97.411(b)(1) and 97.412(a) of this chapter (concerning the procedures for administering the new unit set-asides), except where the State allocates or auctions CSAPR NO_X Annual allowances under an approved SIP revision;

(D) The provisions in § 97.411(c)(5) of this chapter (concerning the disposition of incorrectly allocated CSAPR NO_X Annual allowances);

(E) The provisions in § 97.421(f), (g), and (i) of this chapter (concerning the deadlines for recordation of allocations or auctions of CSAPR NO_X Annual allowances) and the provisions in paragraphs (a)(4)(i)(B) and (C) and (a)(5)(i)(B) and (C) of this section (concerning the deadlines for submission to the Administrator of State-determined allocations or auction results); and

(F) The provisions in § 97.425(b) of this chapter (concerning the procedures for administering the assurance provisions).

(ii) Notwithstanding the provisions of paragraph (a)(6) of this section, if, at the time of any approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR NO_X Annual allowances under subpart AAAAA of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(8) *States with approved SIP revisions addressing the CSAPR NO_X Annual Trading Program.* * * *

* * * * *

(b) *NO_X ozone season emissions*—(1) *General requirements.* The CSAPR NO_X Ozone Season Group 1 Trading Program provisions, the CSAPR NO_X Ozone Season Group 2 Trading Program provisions, and the CSAPR NO_X Ozone Season Group 3 Trading Program provisions set forth respectively in subparts BBBBB, EEEEE, and GGGGG of part 97 of this chapter constitute the CSAPR Federal Implementation Plan provisions that relate to emissions of NO_X during the ozone season (defined as May 1 through September 30 of a calendar year), except as otherwise provided in this section.

(2) *Applicability of CSAPR NO_X Ozone Season Group 1, Group 2, and Group 3 Trading Program provisions.* * * *

* * * * *

(iii) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017 and each subsequent year: Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin.

(iv) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017 through 2020 only, except as provided in paragraph (b)(14)(iii) of this section: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

(v) The provisions of subpart GGGGG of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2021 and each subsequent year: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

(3) *State-determined allocations of CSAPR NO_X Ozone Season Group 1 allowances for 2016.* * * *

* * * * *

(4) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR NO_X Ozone Season Group 1 Trading Program.* A State listed in paragraph (b)(2)(i) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart BBBBB of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

* * * * *

(ii) * * *

(B) * * *

TABLE 3 TO PARAGRAPH (b)(4)(ii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(5) *Full SIP revisions adopting State CSAPR NO_X Ozone Season Group 1 Trading Programs.* * * *

* * * * *

(ii) * * *

(B) * * *

TABLE 4 TO PARAGRAPH (b)(5)(ii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(7) *State-determined allocations of CSAPR NO_X Ozone Season Group 2 allowances for 2018.* * * *

* * * * *

(8) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR NO_X Ozone Season Group 2 Trading Program.* A State listed in paragraph (b)(2)(iii) or (iv) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart EEEEE of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

* * * * *

(ii) The State may adopt, as applicability provisions replacing the provisions in § 97.804(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include all other units (beyond any units to which applicability could be expanded under paragraph (b)(8)(i) of this section) that would have been subject to any emissions trading program regulations approved as a SIP revision for the State under § 51.121 of this chapter; and

(iii) * * *

(B) * * *

TABLE 5 TO PARAGRAPH (b)(8)(iii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(9) *Full SIP revisions adopting State CSAPR NO_X Ozone Season Group 2 Trading Programs.* * * *

* * * * *

(ii) May adopt, as applicability provisions replacing the provisions in § 97.804(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include all other units (beyond any units to which applicability could be expanded under paragraph (b)(9)(i) of this section) that would have been subject to any emissions trading program regulations approved as a SIP revision for the State under § 51.121 of this chapter;

(iii) * * *

(B) * * *

TABLE 6 TO PARAGRAPH (b)(9)(iii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
* * * * * * *	
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(10) *State-determined allocations of CSAPR NO_X Ozone Season Group 3 allowances for 2022.* A State listed in paragraph (b)(2)(v) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO_X Ozone Season Group 3 allowance allocation provisions replacing the provisions in § 97.1011(a) of this chapter with regard to the State and the control period in 2022, a list of CSAPR NO_X Ozone Season Group 3 units and the amount of CSAPR NO_X Ozone Season Group 3 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and commenced commercial operation before January 1, 2019;

(ii) The total amount of CSAPR NO_X Ozone Season Group 3 allowance allocations on the list must not exceed the amount, under § 97.1010(a) of this chapter for the State and the control period in 2022, of the CSAPR NO_X Ozone Season Group 3 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside;

(iii) The list must be submitted electronically in a format specified by the Administrator; and

(iv) The SIP revision must not provide for any change in the units and allocations on the list after approval of the SIP revision by the Administrator and must not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter;

(v) Provided that:

(A) By June 29, 2021, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (b)(10)(i) through (iv) of this section by September 1, 2021; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (b)(10)(v)(A) of this section by September 1, 2021.

(11) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR NO_X Ozone Season Group 3 Trading Program.* A State listed in paragraph (b)(2)(v) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart GGGGG of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

(i) The State may adopt, as applicability provisions replacing the provisions in § 97.1004(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words ''more than 25 MWe'' are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words ''more than 25 MWe'' and is not less than the amount specified by the words ''15 MWe or more'';

(ii) The State may adopt, as applicability provisions replacing the provisions in § 97.1004(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include all other units (beyond any units to which applicability could be expanded under paragraph (b)(11)(i) of this section) that would have been subject to any emissions trading program regulations approved as a SIP revision for the State under § 51.121 of this chapter; and

(iii) The State may adopt, as CSAPR NO_X Ozone Season Group 3 allowance allocation or auction provisions replacing the provisions in §§ 97.1011(a) and (b)(1) and 97.1012(a) of this chapter with regard to the State and the control period in 2023 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 3 allowances and may adopt, in addition to the definitions in § 97.1002 of this chapter, one or more definitions that shall apply only to terms as used in the adopted CSAPR NO_X Ozone Season Group 3 allowance allocation or auction provisions, if such methodology—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_X Ozone Season Group 3 allowances for any such control period not exceeding the amount, under §§ 97.1010(a) and 97.1021 of this chapter for the State and such control period, of the CSAPR NO_X Ozone Season Group 3 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_X Ozone Season Group 3 allowances already allocated and recorded by the Administrator, plus, if the State adopts regulations expanding applicability to additional units pursuant to paragraph (b)(11)(ii) of this section, an additional amount of CSAPR NO_X Ozone Season Group 3 allowances not exceeding the lesser of:

(*1*) The highest of the sum, for all additional units in the State to which applicability is expanded pursuant to paragraph (b)(11)(ii) of this section, of the NO_X emissions reported in accordance with part 75 of this chapter for the ozone season in the year before the year of the submission deadline for the SIP revision under paragraph (b)(11)(iv) of this section and the corresponding sums of the NO_X emissions reported in accordance with part 75 of this chapter for each of the two immediately preceding ozone seasons, provided that each such seasonal sum shall exclude the amount of any NO_X emissions reported by any unit for all hours in any calendar day

during which the unit did not have at least one quality-assured monitor operating hour, as defined in § 72.2 of this chapter; or

(*2*) The portion of the emissions budget under the State's emissions trading program regulations approved as a SIP revision under § 51.121 of this chapter that is attributable to the units to which applicability is expanded pursuant to paragraph (b)(11)(ii) of this section;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 3 allowances for any such control period to any CSAPR NO_X Ozone Season Group 3 units covered by § 97.1011(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 7 to this paragraph;

TABLE 7 TO PARAGRAPH (b)(11)(iii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 3 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2023	June 1, 2022.
2024	June 1, 2022.
2025	June 1, 2023.
2026	June 1, 2023.
2027 and any year thereafter	June 1 of the third year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 3 allowances for any such control period to any CSAPR NO_X Ozone Season Group 3 units covered by §§ 97.1011(b)(1) and 97.1012(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by April 1 of the year following the year of such control period; and

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(11)(iii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter or § 97.526(d) or § 97.826(d) of this chapter;

(iv) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (b)(11)(i), (ii), or (iii) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(11)(iii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(11)(i), (ii), or (iii) of this section.

(12) *Full SIP revisions adopting State CSAPR NO_X Ozone Season Group 3 Trading Programs.* A State listed in paragraph (b)(2)(v) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(v), and (b)(10) and (11) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State), regulations that are substantively identical to the provisions of the CSAPR NO_X Ozone Season Group 3 Trading Program set forth in §§ 97.1002 through 97.1035 of this chapter, except that the SIP revision:

(i) May adopt, as applicability provisions replacing the provisions in § 97.1004(a)(1) and (2) of this chapter with regard to the State, provisions substantively identical to those provisions, except that the words ''more than 25 MWe'' are replaced, wherever such words appear, by words specifying a uniform lower limit on the amount of megawatts that is not greater than the amount specified by the words ''more than 25 MWe'' and is not less than the amount specified by the words ''15 MWe or more'';

(ii) May adopt, as applicability provisions replacing the provisions in § 97.1004(a) and (b) of this chapter with regard to the State, provisions substantively identical to those provisions, except that applicability is expanded to include all other units (beyond any units to which applicability could be expanded under paragraph (b)(12)(i) of this section) that would have been subject to any emissions trading program regulations approved as a SIP revision for the State under § 51.121 of this chapter;

(iii) May adopt, as CSAPR NO_X Ozone Season Group 3 allowance allocation provisions replacing the provisions in §§ 97.1011(a) and (b)(1) and 97.1012(a) of this chapter with regard to the State and the control period in 2023 or any subsequent year, any methodology under which the State or the permitting authority allocates or auctions CSAPR NO_X Ozone Season Group 3 allowances and that—

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_X Ozone Season Group 3 allowances for any such control period not exceeding the amount, under §§ 97.1010(a) and 97.1021 of this chapter for the State and such control period, of the CSAPR NO_X Ozone Season Group 3 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_X Ozone Season Group 3 allowances already allocated and recorded by the Administrator, plus, if the State adopts regulations expanding applicability to additional units pursuant to paragraph (b)(12)(ii) of this section, an additional amount of CSAPR NO_X Ozone Season Group 3 allowances not exceeding the lesser of:

(*1*) The highest of the sum, for all additional units in the State to which applicability is expanded pursuant to paragraph (b)(12)(ii) of this section, of the NO_X emissions reported in accordance with part 75 of this chapter for the ozone season in the year before the year of the submission deadline for the SIP revision under paragraph (b)(12)(viii) of this section and the corresponding sums of the NO_X emissions reported in accordance with part 75 of this chapter for each of the two immediately preceding ozone seasons, provided that each such seasonal sum shall exclude the amount

of any NO_X emissions reported by any unit for all hours in any calendar day during which the unit did not have at least one quality-assured monitor operating hour, as defined in § 72.2 of this chapter; or

(*2*) The portion of the emissions budget under the State's emissions trading program regulations approved as a SIP revision under § 51.121 of this chapter that is attributable to the units to which applicability is expanded pursuant to paragraph (b)(12)(ii) of this section;

(B) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 3 allowances for any such control period to any CSAPR NO_X Ozone Season Group 3 units covered by § 97.1011(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions for such control period (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator no later than the dates in Table 8 to this paragraph;

TABLE 8 TO PARAGRAPH (b)(12)(iii)(B)

Year of the control period for which CSAPR NO_X Ozone Season Group 3 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
2023	June 1, 2022.
2024	June 1, 2022.
2025	June 1, 2023.
2026	June 1, 2023.
2027 and any year thereafter	June 1 of the third year before the year of the control period.

(C) Requires, to the extent the State adopts provisions for allocations or auctions of CSAPR NO_X Ozone Season Group 3 allowances for any such control period to any CSAPR NO_X Ozone Season Group 3 units covered by §§ 97.1011(b)(1) and 97.1012(a) of this chapter, that the State or the permitting authority submit such allocations or the results of such auctions (except allocations or results of auctions to such units of CSAPR NO_X Ozone Season Group 3 allowances remaining in a set-aside after completion of the allocations or auctions for which the set-aside was created) to the Administrator by April 1 of the year following the year of such control period; and

(D) Does not provide for any change, after the submission deadlines in paragraphs (b)(12)(iii)(B) and (C) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter or § 97.526(d) or § 97.826(d) of this chapter;

(iv) May adopt, in addition to the definitions in § 97.1002 of this chapter, one or more definitions that shall apply only to terms as used in the CSAPR NO_X Ozone Season Group 3 allowance allocation or auction provisions adopted under paragraph (b)(12)(iii) of this section;

(v) May substitute the name of the State for the term ''State'' as used in subpart GGGGG of part 97 of this chapter, to the extent the Administrator determines that such substitutions do not make substantive changes in the provisions in §§ 97.1002 through 97.1035 of this chapter; and

(vi) Must not include any of the requirements imposed on any unit in Indian country within the borders of the State in the provisions in §§ 97.1002 through 97.1035 of this chapter and must not include the provisions in §§ 97.1011(b)(2) and (c)(5)(iii), 97.1012(b), and 97.1021(h) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(vii) Provided that, if and when any covered unit is located in Indian country within the borders of the State, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.1002 (definitions of ''base CSAPR NO_X Ozone Season Group 3 source'', ''base CSAPR NO_X Ozone Season Group 3 unit'', ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share''), 97.1006(c)(2), and 97.1025 of this chapter and the portions of other provisions of subpart GGGGG of part 97 of this chapter referencing these sections and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and

(viii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (b)(12)(i) through (vi) of this section by December 1 of the year before the year of the deadlines for submission of allocations or auction results under paragraphs (b)(12)(iii)(B) and (C) of this section applicable to the first control period for which the State wants to replace the applicability provisions, make allocations, or hold an auction under paragraph (b)(12)(i), (ii), or (iii) of this section.

(13) *Withdrawal of CSAPR FIP provisions relating to NO_X ozone season emissions; satisfaction of NO_X SIP Call requirements.* Following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section, paragraphs (b)(1), (b)(2)(iii) or (iv), and (b)(7) and (8) of this section, or paragraphs (b)(1), (b)(2)(v), and (b)(10) and (11) of this section for sources in the State—

* * * * *

(14) *Continued applicability of certain federal trading program provisions for NO_X ozone season emissions.* (i) Notwithstanding the provisions of paragraph (b)(13)(i) of this section or any State's SIP, when carrying out the functions of the Administrator under any State CSAPR NO_X Ozone Season Group 1 Trading Program or State CSAPR NO_X Ozone Season Group 2 Trading Program pursuant to a SIP revision approved under this section, the Administrator will apply the following provisions of this section, as amended, and the following provisions of subpart BBBBB of part 97 of this chapter, as amended, or subpart EEEEE of part 97 of this chapter, as amended, with regard to the State and any source subject to such State trading program:

(A) The definitions in § 97.502 of this chapter or § 97.802 of this chapter;

(B) The provisions in § 97.510(a) of this chapter (concerning in part the amounts of the new unit set-asides);

(C) The provisions in §§ 97.511(b)(1) and 97.512(a) of this chapter or

§§ 97.811(b)(1) and 97.812(a) of this chapter (concerning the procedures for administering the new unit set-asides), except where the State allocates or auctions CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances under an approved SIP revision;

(D) The provisions in § 97.511(c)(5) of this chapter or § 97.811(c)(5) of this chapter (concerning the disposition of incorrectly allocated CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances);

(E) The provisions in § 97.521(f), (g), and (i) of this chapter or § 97.821(f), (g), and (i) of this chapter (concerning the deadlines for recordation of allocations or auctions of CSAPR NO_X Ozone Season Group 1 allowances or CSAPR NO_X Ozone Season Group 2 allowances) and the provisions in paragraphs (b)(4)(ii)(B) and (C) and (b)(5)(ii)(B) and (C) of this section or paragraphs (b)(8)(iii)(B) and (C) and (b)(9)(iii)(B) and (C) of this section (concerning the deadlines for submission to the Administrator of State-determined allocations or auction results);

(F) The provisions in § 97.525(b) of this chapter or § 97.825(b) of this chapter (concerning the procedures for administering the assurance provisions); and

(G) The provisions in § 97.526(e) of this chapter or § 97.826(e) of this chapter (concerning the use of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances to satisfy requirements to hold CSAPR NO_X Ozone Season Group 1 allowances or the use of CSAPR NO_X Ozone Season Group 3 allowances to satisfy requirements to hold CSAPR NO_X Ozone Season Group 2 allowances).

(ii) Notwithstanding the provisions of paragraph (b)(13)(i) of this section, if, at the time of any approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 1 allowances under subpart BBBBB of part 97 of this chapter, or allocations of CSAPR NO_X Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter, or allocations of CSAPR NO_X Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter, to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(iii) Notwithstanding any discontinuation of the applicability of subpart BBBBB or EEEEE of part 97 of this chapter to the sources in a State with regard to emissions occurring in any control period pursuant to paragraph (b)(2)(ii) or (iv) or (b)(13)(i) of this section, the following provisions shall continue to apply with regard to all CSAPR NO_X Ozone Season Group 1 allowances and CSAPR NO_X Ozone Season Group 2 allowances at any time allocated for any control period to any source or other entity in the State and shall apply to all entities, wherever located, that at any time held or hold such allowances:

(A) The provisions of § 97.526(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 1 allowances between certain Allowance Management System accounts under common control);

(B) The provisions of § 97.526(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 1 allowances allocated for control periods before 2017 to different amounts of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances);

(C) The provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain Allowance Management System accounts under common control);

(D) The provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances); and

(E) The provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods after 2020 and recorded in the compliance accounts of sources in States listed in paragraph (b)(2)(iv) of this section).

(15) *States with approved SIP revisions addressing the CSAPR NO_X Ozone Season Group 1 Trading Program.* * * *

* * * * *

(16) *States with approved SIP revisions addressing the CSAPR NO_X Ozone Season Group 2 Trading Program.* (i) The following States have SIP revisions approved by the Administrator under paragraph (b)(7), (8), or (9) of this section:

* * * * *

(ii) Notwithstanding any provision of subpart EEEEE of part 97 of this chapter or any State's SIP, with regard to any State listed in paragraph (b)(2)(iv) of this section and any control period that begins after December 31, 2020, the Administrator will not carry out any of the functions set forth for the Administrator in subpart EEEEE of part 97 of this chapter, except §§ 97.811(d) and 97.826(c) and (d) of this chapter, or in any emissions trading program provisions in a State's SIP approved under paragraph (b)(8) or (9) of this section.

(17) *States with approved SIP revisions addressing the CSAPR NO_X Ozone Season Group 3 Trading Program.* The following States have SIP revisions approved by the Administrator under paragraph (b)(10), (11), or (12) of this section:

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(10) of this section as replacing the CSAPR NO_X Ozone Season Group 3 allowance allocation provisions in § 97.1011(a) of this chapter with regard to the State and the control period in 2022: [None].

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(11) of this section as replacing the CSAPR NO_X Ozone Season Group 3 applicability provisions in § 97.1004(a) and (b) or § 97.1004(a)(1) and (2) of this chapter or the CSAPR NO_X Ozone Season Group 2 allowance allocation provisions in §§ 97.1011(a) and (b)(1) and 97.1012(a) of this chapter with regard to the State and the control period in 2023 or any subsequent year: [None].

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(12) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(v), and (b)(10) and (11) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): [None].

■ 5. Amend § 52.39 by:

■ a. Adding a paragraph heading to paragraph (a) and removing ''(SO_2).'' and adding in its place ''(SO_2), except as otherwise provided in this section.'';

■ b. Adding paragraph headings to paragraphs (b) and (c);

■ c. Adding a paragraph heading to paragraph (d) introductory text and removing ''Notwithstanding the provisions of paragraph (a) of this

section, a State'' and adding in its place ''A State'';

■ d. Revising paragraph (e) introductory text;

■ e. In paragraph (e)(1)(i), removing the period at the end of the paragraph and adding in its place a semicolon;

■ f. In paragraph (e)(1)(ii), removing ''the following dates:'' and adding in its place ''the dates in Table 1 to this paragraph;'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';

■ g. In paragraph (e)(1)(iii), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and'';

■ h. Adding a paragraph heading to paragraph (f) introductory text and removing ''Notwithstanding the provisions of paragraph (a) of this section, a State'' and adding in its place ''A State'';

■ i. In paragraph (f)(1)(i), removing the period at the end of the paragraph and adding in its place a semicolon;

■ j. In paragraph (f)(1)(ii), removing ''the following dates:'' and adding in its place ''the dates in Table 2 to this paragraph;'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';

■ k. In paragraph (f)(1)(iii), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and'';

■ l. In paragraph (f)(5), adding ''and'' after the semicolon at the end of the paragraph;

■ m. Adding a paragraph heading to paragraph (g) introductory text and removing ''Notwithstanding the provisions of paragraph (a) of this section, a State'' and adding in its place ''A State'';

■ n. Revising paragraph (h) introductory text;

■ o. In paragraph (h)(1)(i), removing the period at the end of the paragraph and adding in its place a semicolon;

■ p. In paragraph (h)(1)(ii), removing ''the following dates:'' and adding in its place ''the dates in Table 3 to this paragraph;'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';

■ q. In paragraph (h)(1)(iii), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and'';

■ r. Adding a paragraph heading to paragraph (i) introductory text and removing ''Notwithstanding the provisions of paragraph (a) of this section, a State'' and adding in its place ''A State'';

■ s. In paragraph (i)(1)(i), removing the period at the end of the paragraph and adding in its place a semicolon;

■ t. In paragraph (i)(1)(ii), removing ''the following dates:'' and adding in its place ''the dates in Table 4 to this paragraph;'', adding a heading to the table, removing the table entry for ''2023 and any year thereafter'', and adding table entries for ''2023 and 2024'' and ''2025 and any year thereafter'';

■ u. In paragraph (i)(1)(iii), removing ''year of such control period.'' and adding in its place ''year of such control period, for a control period before 2021, or by April 1 of the year following the control period, for a control period in 2021 or thereafter; and'';

■ v. In paragraph (i)(5), adding ''and'' after the semicolon at the end of the paragraph;

■ w. Adding a paragraph heading to paragraph (j) and removing ''Following promulgation'' and adding in its place ''Except as provided in paragraph (k) of this section, following promulgation'';

■ x. Revising paragraph (k); and

■ y. Adding paragraph headings to paragraphs (l) introductory text and (m) introductory text.

The additions and revisions read as follows:

§ 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?

(a) *General requirements for SO_2 emissions.* * * *

(b) *Applicability of CSAPR SO_2 Group 1 Trading Program provisions.* * * *

(c) *Applicability of CSAPR SO_2 Group 2 Trading Program provisions.* * * *

* * * * *

(d) *State-determined allocations of CSAPR SO_2 Group 1 allowances for 2016.* * * *

* * * * *

(e) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR SO_2 Group 1 Trading Program.* A State listed in paragraph (b) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart CCCCC of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

(1) * * *

(ii) * * *

TABLE 1 TO PARAGRAPH (e)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(f) *Full SIP revisions adopting State CSAPR SO_2 Group 1 Trading Programs.* * * *

(1) * * *

(ii) * * *

TABLE 2 TO PARAGRAPH (f)(1)(ii)

Year of the control period for which CSAPR SO_2 Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(g) *State-determined allocations of CSAPR SO_2 Group 2 allowances for 2016.* * * *

* * * * *

(h) *Abbreviated SIP revisions replacing certain provisions of the federal CSAPR SO_2 Group 2 Trading Program.* A State listed in paragraph (c)(1) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart DDDDD of part 97 of this chapter for the State's sources, and not substantively replacing any other provisions, as follows:

(1) * * *

(ii) * * *

TABLE 3 TO PARAGRAPH (h)(1)(II)

Year of the control period for which CSAPR SO_2 Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(i) *Full SIP revisions adopting State CSAPR SO_2 Group 2 Trading Programs.* * * *

(1) * * *

(ii) * * *

TABLE 4 TO PARAGRAPH (I)(1)(II)

Year of the control period for which CSAPR SO_2 Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the Administrator
* * * * * * *	
2023 and 2024	June 1 of the fourth year before the year of the control period.
2025 and any year thereafter	June 1 of the third year before the year of the control period.

* * * * *

(j) *Withdrawal of CSAPR FIP provisions relating to SO_2 emissions.* * * *

(k) *Continued applicability of certain federal trading program provisions for SO_2 emissions.* (1) Notwithstanding the provisions of paragraph (j) of this section or any State's SIP, when carrying out the functions of the Administrator under any State CSAPR SO_2 Group 1 Trading Program or State CSAPR SO_2 Group 2 Trading Program pursuant to a SIP revision approved under this section, the Administrator will apply the following provisions of this section, as amended, and the following provisions of subpart CCCCC of part 97 of this chapter, as amended, or subpart DDDDD of part 97 of this chapter, as amended, with regard to the State and any source subject to such State trading program:

(i) The definitions in § 97.602 of this chapter or § 97.702 of this chapter;

(ii) The provisions in § 97.610(a) of this chapter or § 97.710(a) of this chapter (concerning in part the amounts of the new unit set-asides);

(iii) The provisions in §§ 97.611(b)(1) and 97.612(a) of this chapter or §§ 97.711(b)(1) and 97.712(a) of this chapter (concerning the procedures for administering the new unit set-asides), except where the State allocates or auctions CSAPR SO_2 Group 1 allowances or CSAPR SO_2 Group 2 allowances under an approved SIP revision;

(iv) The provisions in § 97.611(c)(5) of this chapter or § 97.711(c)(5) of this chapter (concerning the disposition of incorrectly allocated CSAPR SO_2 Group 1 allowances or CSAPR SO_2 Group 2 allowances);

(v) The provisions in § 97.621(f), (g), and (i) of this chapter or § 97.721(f), (g), and (i) of this chapter (concerning the deadlines for recordation of allocations or auctions of CSAPR SO_2 Group 1 allowances or CSAPR SO_2 Group 2 allowances) and the provisions in paragraphs (e)(1)(ii) and (iii) and (f)(1)(ii) and (iii) of this section or paragraphs (h)(1)(ii) and (iii) and (i)(1)(ii) and (iii) of this section (concerning the deadlines for submission to the Administrator of State-determined allocations or auction results); and

(vi) The provisions in § 97.625(b) of this chapter or § 97.725(b) of this chapter (concerning the procedures for administering the assurance provisions).

(2) Notwithstanding the provisions of paragraph (j) of this section, if, at the time of any approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR SO_2 Group 1 allowances under subpart CCCCC of part 97 of this chapter, or allocations of CSAPR SO_2 Group 2 allowances under subpart DDDDD of part 97 of this chapter, to units in the

State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(l) *States with approved SIP revisions addressing the CSAPR SO_2 Group 1 Trading Program.* * * *

* * * * *

(m) *States with approved SIP revisions addressing the CSAPR SO_2 Group 2 Trading Program.* * * *

* * * * *

Subpart O—Illinois

■ 6. Amend § 52.731 by:

■ a. In paragraph (b)(2), removing ''2017 and each subsequent year.'' and adding in its place ''2017 through 2020.'', and removing the second sentence;

■ b. Redesignating paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3);

■ c. In newly redesignated paragraph (b)(4), removing ''(b)(2)'' and adding in its place ''(b)(3)'' each time it appears, removing ''Group 2'' and adding in its place ''Group 3'' each time it appears, and removing ''EEEEE'' and adding in its place ''GGGGG'' each time it appears; and

■ d. Adding paragraph (b)(5).

The additions read as follows:

§ 52.731 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(3) The owner and operator of each source and each unit located in the State of Illinois and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Illinois' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

* * * * *

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2020 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances), and the provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2020) shall continue to apply.

Subpart P—Indiana

■ 7. Amend § 52.789 by revising paragraphs (b)(2) and (3) and adding paragraphs (b)(4) and (5) to read as follows:

§ 52.789 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Indiana and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 through 2020. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Indiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iv), except to the extent the Administrator's approval is partial or conditional, provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(3) The owner and operator of each source and each unit located in the State of Indiana and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Indiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, if, at the time of the approval of Indiana's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2020 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances), and the provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2020) shall continue to apply.

Subpart S—Kentucky

■ 8. Amend § 52.940 by:

■ a. In paragraph (b)(2), removing ''2017 and each subsequent year.'' and adding in its place ''2017 through 2020.'', and removing the second sentence;

■ b. Redesignating paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3);

■ c. In newly redesignated paragraph (b)(4), removing ''(b)(2)'' and adding in its place ''(b)(3)'' each time it appears, removing ''Group 2'' and adding in its place ''Group 3'' each time it appears,

and removing ''EEEEE'' and adding in its place ''GGGGG'' each time it appears; and

■ d. Adding paragraph (b)(5).

The additions read as follows:

§ 52.940 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(3) The owner and operator of each source and each unit located in the State of Kentucky and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Kentucky's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

* * * * *

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2020 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances), and the provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2020) shall continue to apply.

Subpart T—Louisiana

■ 9. Amend § 52.984 by:

■ a. In paragraph (d)(2), removing ''2017 and each subsequent year.'' and adding in its place ''2017 through 2020.'', and removing the second and third sentences;

■ b. Redesignating paragraph (d)(3) as paragraph (d)(4) and adding a new paragraph (d)(3);

■ c. In newly redesignated paragraph (d)(4), removing ''(d)(2)'' and adding in its place ''(d)(3)'' each time it appears, removing ''Group 2'' and adding in its place ''Group 3'' each time it appears, and removing ''EEEEE'' and adding in its place ''GGGGG'' each time it appears; and

■ d. Adding paragraph (d)(5).

The additions read as follows:

§ 52.984 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(d) * * *

(3) The owner and operator of each source and each unit located in the State of Louisiana and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Louisiana's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Louisiana's SIP.

* * * * *

(5) Notwithstanding the provisions of paragraph (d)(2) of this section, after 2020 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances), and the provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2020) shall continue to apply.

Subpart V—Maryland

■ 10. Amend § 52.1084 by:

■ a. In paragraph (b)(2), removing ''2017 and each subsequent year.'' and adding in its place ''2017 through 2020.'', and removing the second sentence;

■ b. Redesignating paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3);

■ c. In newly redesignated paragraph (b)(4), removing ''(b)(2)'' and adding in its place ''(b)(3)'' each time it appears, removing ''Group 2'' and adding in its place ''Group 3'' each time it appears, and removing ''EEEEE'' and adding in its place ''GGGGG'' each time it appears; and

■ d. Adding paragraph (b)(5).

The additions read as follows:

§ 52.1084 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(3) The owner and operator of each source and each unit located in the State of Maryland and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Maryland's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

* * * * *

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2020 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances), and the provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2020) shall continue to apply.

Subpart X—Michigan

■ 11. Amend § 52.1186 by:

■ a. In paragraph (e)(2), removing ''2017 and each subsequent year.'' and adding in its place ''2017 through 2020.'', and removing the second and third sentences;
■ b. Redesignating paragraph (e)(3) as paragraph (e)(4) and adding a new paragraph (e)(3);
■ c. In newly redesignated paragraph (e)(4), removing ''(e)(2)'' and adding in its place ''(e)(3)'' each time it appears, removing ''Group 2'' and adding in its place ''Group 3'' each time it appears, and removing ''EEEEE'' and adding in its place ''GGGGG'' each time it appears; and
■ d. Adding paragraph (e)(5).
The additions read as follows:

§ 52.1186 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e) * * *

(3) The owner and operator of each source and each unit located in the State of Michigan and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan's SIP.

* * * * *

(5) Notwithstanding the provisions of paragraph (e)(2) of this section, after 2020 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances), and the provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2020) shall continue to apply.

Subpart FF—New Jersey

■ 12. Amend § 52.1584 by:
■ a. In paragraph (e)(2), removing ''2017 and each subsequent year.'' and adding in its place ''2017 through 2020.'', and removing the second sentence;
■ b. Redesignating paragraph (e)(3) as paragraph (e)(4) and adding a new paragraph (e)(3);
■ c. In newly redesignated paragraph (e)(4), removing ''(e)(2)'' and adding in its place ''(e)(3)'' each time it appears, removing ''Group 2'' and adding in its place ''Group 3'' each time it appears, and removing ''EEEEE'' and adding in its place ''GGGGG'' each time it appears; and
■ d. Adding paragraph (e)(5).
The additions read as follows:

§ 52.1584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e) * * *

(3) The owner and operator of each source and each unit located in the State of New Jersey and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to New Jersey's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

* * * * *

(5) Notwithstanding the provisions of paragraph (e)(2) of this section, after 2020 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances), and the provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2020) shall continue to apply.

Subpart HH—New York

■ 13. Amend § 52.1684 by:
■ a. In paragraph (b)(2), removing ''2017 and each subsequent year.'' and adding in its place ''2017 through 2020.'', and removing the second and third sentences;
■ b. Redesignating paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3);
■ c. In newly redesignated paragraph (b)(4), removing ''(b)(2)'' and adding in its place ''(b)(3)'' each time it appears, removing ''Group 2'' and adding in its place ''Group 3'' each time it appears, and removing ''EEEEE'' and adding in its place ''GGGGG'' each time it appears; and
■ d. Adding paragraph (b)(5).
The additions read as follows:

§ 52.1684 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(3) The owner and operator of each source and each unit located in the State of New York and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State will be eliminated by the promulgation of an approval by the Administrator of a revision to New York's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in Indian country within the borders of the State will not be eliminated by the promulgation of an approval by the Administrator of a revision to New York's SIP.

* * * * *

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2020 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances), and the provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2020) shall continue to apply.

Subpart KK—Ohio

■ 14. Amend § 52.1882 by:
■ a. In paragraph (b)(2), removing ''2017 and each subsequent year.'' and adding in its place ''2017 through 2020.'', and removing the second sentence;
■ b. Redesignating paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3);
■ c. In newly redesignated paragraph (b)(4), removing ''(b)(2)'' and adding in its place ''(b)(3)'' each time it appears, removing ''Group 2'' and adding in its place ''Group 3'' each time it appears, and removing ''EEEEE'' and adding in its place ''GGGGG'' each time it appears; and
■ d. Adding paragraph (b)(5).
The additions read as follows:

§ 52.1882 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(3) The owner and operator of each source and each unit located in the State of Ohio and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Ohio's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

* * * * *

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2020 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances), and the provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2020) shall continue to apply.

Subpart NN—Pennsylvania

■ 15. Amend § 52.2040 by:
■ a. In paragraph (b)(2), removing ''2017 and each subsequent year.'' and adding in its place ''2017 through 2020.'', and removing the second sentence;
■ b. Redesignating paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3);
■ c. In newly redesignated paragraph (b)(4), removing ''(b)(2)'' and adding in its place ''(b)(3)'' each time it appears, removing ''Group 2'' and adding in its place ''Group 3'' each time it appears, and removing ''EEEEE'' and adding in its place ''GGGGG'' each time it appears; and
■ d. Adding paragraph (b)(5).
The additions read as follows:

§ 52.2040 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(3) The owner and operator of each source and each unit located in the State of Pennsylvania and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Pennsylvania's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

* * * * *

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2020 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances), and the provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2020) shall continue to apply.

Subpart VV—Virginia

■ 16. Amend § 52.2440 by:
■ a. In paragraph (b)(2), removing ''2017 and each subsequent year.'' and adding in its place ''2017 through 2020.'', and removing the second sentence;
■ b. Redesignating paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3);
■ c. In newly redesignated paragraph (b)(4), removing ''(b)(2)'' and adding in its place ''(b)(3)'' each time it appears, removing ''Group 2'' and adding in its place ''Group 3'' each time it appears, and removing ''EEEEE'' and adding in its place ''GGGGG'' each time it appears; and
■ d. Adding paragraph (b)(5).
The additions read as follows:

§ 52.2440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(3) The owner and operator of each source and each unit located in the State of Virginia and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Virginia's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under

§ 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

* * * * *

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2020 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances), and the provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2020) shall continue to apply.

Subpart XX—West Virginia

■ 17. Amend § 52.2540 by:

■ a. In paragraph (b)(2), removing ''2017 and each subsequent year.'' and adding in its place ''2017 through 2020.'', and removing the second sentence;

■ b. Redesignating paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3);

■ c. In newly redesignated paragraph (b)(4), removing ''(b)(2)'' and adding in its place ''(b)(3)'' each time it appears, removing ''Group 2'' and adding in its place ''Group 3'' each time it appears, and removing ''EEEEE'' and adding in its place ''GGGGG'' each time it appears; and

■ d. Adding paragraph (b)(5).

The additions read as follows:

§ 52.2540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(3) The owner and operator of each source and each unit located in the State of West Virginia and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2021 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to West Virginia's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(v), except to the extent the Administrator's approval is partial or conditional.

* * * * *

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2020 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_X Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(d) of this chapter (concerning the conversion of amounts of unused CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 to different amounts of CSAPR NO_X Ozone Season Group 3 allowances), and the provisions of § 97.811(d) of this chapter (concerning the recall of CSAPR NO_X Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2020) shall continue to apply.

PART 78—APPEAL PROCEDURES

■ 18. The authority citation for part 78 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 19. Amend § 78.1 by:

■ a. In paragraphs (a)(1)(i)(A) and (B), removing the period at the end of the paragraph and adding in its place a semicolon;

■ b. Revising paragraphs (a)(1)(i)(C) and (D);

■ c. Removing paragraph (a)(1)(i)(E) and redesignating paragraph (a)(1)(i)(F) as paragraph (a)(1)(i)(E);

■ d. In paragraph (a)(1)(iv), removing ''and subpart EEEEE'' and adding in its place ''subpart EEEEE of part 97 of this chapter, and subpart GGGGG'' and removing ''and § 52.38(b)(6), (8), or (9)'' and adding in its place ''§ 52.38(b)(8) or (9) of this chapter, and § 52.38(b)(11) or (12)'';

■ e. In paragraph (b)(1) introductory text, removing the semicolon at the end of the paragraph and adding in its place a comma;

■ f. In paragraph (b)(9)(i), removing ''(c)(2) of'' and adding in its place ''(c)(2) of'';

■ g. In paragraph (b)(13)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.412'';

■ h. In paragraph (b)(13)(iii), removing ''§§ 97.424 and 97.425'' and adding in its place ''§ 97.424 or § 97.425'';

■ i. In paragraph (b)(14)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.512'';

■ j. In paragraph (b)(14)(iii), removing ''§§ 97.524 and 97.525'' and adding in its place ''§ 97.524 or § 97.525'';

■ k. In paragraph (b)(14)(viii), removing ''the removal of'' and adding in its place ''the deduction of'', and removing ''under § 97.526(c)'' and adding in its place ''or CSAPR NO_X Ozone Season Group 3 allowances under § 97.526(d)'';

■ l. In paragraph (b)(15)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.612'';

■ m. In paragraph (b)(15)(iii), removing ''§§ 97.624 and 97.625'' and adding in its place ''§ 97.624 or § 97.625'';

■ n. In paragraph (b)(16)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.712'';

■ o. In paragraph (b)(16)(iii), removing ''§§ 97.724 and 97.725'' and adding in its place ''§ 97.724 or § 97.725'';

■ p. In paragraph (b)(17)(i), removing ''and (b)'' and adding in its place ''or (c) or § 97.812'';

■ q. In paragraph (b)(17)(iii), removing ''§§ 97.824 and 97.825'' and adding in its place ''§ 97.824 or § 97.825'';

■ r. Adding paragraphs (b)(17)(viii) and (ix);

■ s. Redesignating paragraph (b)(18) as paragraph (b)(20) and adding new paragraphs (b)(18) and (19);

■ t. In newly redesignated paragraph (b)(20)(i), removing ''A determination of eligibility for'' and adding in its place ''The decision on eligibility for a''; and

■ u. In newly redesignated paragraph (b)(20)(iii), removing ''and § 98.448(d)'' and adding in its place ''or (d)''.

The revisions and additions read as follows:

§ 78.1 Purpose and scope.

(a) * * *

(1) * * *

(i) * * *

(C) Subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter; subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter; or State regulations approved under § 51.123(o)(1) or (2) or (aa)(1) or (2) or § 51.124(o)(1) or (2) of this chapter;

(D) Subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter or State regulations approved under § 52.38(a)(4) or (5) or (b)(4), (5), (8), (9), (11), or (12) or § 52.39(e), (f), (h), or (i) of this chapter; or

* * * * *

(b) * * *

(17) * * *

(viii) The decision on the deduction of CSAPR NO_X Ozone Season Group 2 allowances from an Allowance Management System account and the allocation to such account or another

account of CSAPR NO_X Ozone Season Group 3 allowances under § 97.826(d) of this chapter.

(ix) The decision on the recall of allocations of CSAPR NO_X Ozone Season Group 2 allowances and the deduction of such allowances from an Allowance Management System account under § 97.811(d) of this chapter.

(18) Under subpart FFFFF of part 97 of this chapter,

(i) The decision on the allocation of Texas SO_2 Trading Program allowances under § 97.911(a)(2) or (c) or § 97.912 of this chapter.

(ii) The decision on the transfer of Texas SO_2 Trading Program allowances under § 97.923 of this chapter.

(iii) The decision on the deduction of Texas SO_2 Trading Program allowances under § 97.924 or § 97.925 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.927 of this chapter.

(v) The adjustment of information in a submission and the decision on the deduction and transfer of Texas SO_2 Trading Program allowances based on the information as adjusted under § 97.928 of this chapter.

(vi) The finalization of control period emissions data, including retroactive adjustment based on audit.

(vii) The approval or disapproval of a petition under § 97.935 of this chapter.

(19) Under subpart GGGGG of part 97 of this chapter,

(i) The decision on the allocation of CSAPR NO_X Ozone Season Group 3 allowances under § 97.1011(a)(2) or (3) or (c) or § 97.1012 of this chapter.

(ii) The decision on the transfer of CSAPR NO_X Ozone Season Group 3 allowances under § 97.1023 of this chapter.

(iii) The decision on the deduction of CSAPR NO_X Ozone Season Group 3 allowances under § 97.1024 or § 97.1025 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.1027 of this chapter.

(v) The adjustment of information in a submission and the decision on the deduction and transfer of CSAPR NO_X Ozone Season Group 3 allowances based on the information as adjusted under § 97.1028 of this chapter.

(vi) The finalization of control period emissions data, including retroactive adjustment based on audit.

(vii) The approval or disapproval of a petition under § 97.1035 of this chapter.

* * * * *

■ 20. Amend § 78.2 by:

■ a. Revising paragraph (a)(1);

■ b. In paragraphs (a)(2)(ii) and (iii), removing ''Who submitted'' and adding in its place ''Any person who submitted''; and

■ c. In paragraph (b), removing ''subpart'' and adding in its place ''part''.

The revision reads as follows:

§ 78.2 General.

(a) * * *

(1) The terms used in this part with regard to a decision of the Administrator that is appealed under this part shall have the meanings as set forth in the regulations under which the Administrator made such decision and as set forth in paragraph (a)(2) of this section and § 72.2 of this chapter.

* * * * *

■ 21. Amend § 78.3 by:

■ a. Revising paragraph (a);

■ b. In paragraph (b)(3)(i)(A), removing ''(a)(1), (2), (10), or (11) of this section.'' and adding in its place ''(a)(1) of this section;'';

■ c. In paragraph (b)(3)(i)(B), removing ''(a)(3) of this section.'' and adding in its place ''(a)(2) of this section;'';

■ d. In paragraph (b)(3)(i)(C), removing ''(a)(4), (5), (6), (7), (8), or (9) of this section.'' and adding in its place ''(a)(3) of this section;'';

■ e. Adding paragraphs (b)(3)(i)(D) and (E);

■ f. In paragraph (c)(5)(ii), removing the period at the end of the paragraph and adding in its place a semicolon;

■ g. Revising paragraphs (c)(7)(i) through (v);

■ h. In paragraph (d)(1), removing the period at the end of the paragraph and adding in its place a semicolon;

■ i. In paragraph (d)(2)(i), removing ''the Acid Rain Program or subpart AAAAA, BBBBB, CCCCC, DDDDD, or EEEEE of part 97 of this chapter.'' and adding in its place ''parts 72, 73, 74, 75, 76, and 77 of this chapter;'';

■ j. In paragraph (d)(2)(ii), removing ''the NO_X Budget Trading Program.'' and adding in its place ''subparts A through J of part 97 of this chapter;'';

■ k. In paragraph (d)(2)(iii), removing the period at the end of the paragraph and adding in its place a semicolon;

■ l. Adding paragraphs (d)(2)(iv) and (v);

■ m. In paragraphs (d)(3) and (4), removing the period at the end of the paragraph and adding in its place a semicolon;

■ n. Revising paragraphs (d)(5) and (6); and

■ o. Removing paragraph (d)(7) and redesignating paragraph (d)(8) as paragraph (d)(7).

The revisions and additions read as follows:

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a)(1) The following persons may petition for administrative review of a decision of the Administrator that is made under parts 72, 73, 74, 75, 76, and 77 of this chapter and that is appealable under § 78.1(a):

(i) The designated representative for a unit or source covered by the decision or the authorized account representative for any Allowance Tracking System account covered by the decision; or

(ii) Any interested person with regard to the decision.

(2) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts A through J of part 97 of this chapter and that is appealable under § 78.1(a):

(i) The NO_X authorized account representative for a unit or source covered by the decision or any NO_X Allowance Tracking System account covered by the decision; or

(ii) Any interested person with regard to the decision.

(3) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter or subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source covered by the decision or the CAIR authorized account representative for any CAIR NO_X Allowance Tracking System account, CAIR SO_2 Allowance Tracking System account, or CAIR NO_X Ozone Season Allowance Tracking System account covered by the decision; or

(ii) Any interested person with regard to the decision.

(4) The following persons may petition for administrative review of a decision of the Administrator that is made under subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter and that is appealable under § 78.1(a):

(i) The designated representative for a unit or source covered by the decision or the authorized account representative for any Allowance Management System account covered by the decision; or

(ii) Any interested person with regard to the decision.

(5) The following persons may petition for administrative review of a decision of the Administrator that is made under subpart RR of part 98 of this chapter and that is appealable under § 78.1(a):

(i) The designated representative for a facility covered by the decision; or

(ii) Any interested person with regard to the decision.

(b) * * *

(3) * * *

(i) * * *

(D) The designated representative or authorized account representative, for a petition under paragraph (a)(4) of this section; or

(E) The designated representative, for a petition under paragraph (a)(5) of this section; and

* * * * *

(c) * * *

(7) * * *

(i) Parts 72, 73, 74, 75, 76, and 77 of this chapter;

(ii) Subparts A through J of part 97 of this chapter;

(iii) Subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter or subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter;

(iv) Subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter; or

(v) Subpart RR of part 98 of this chapter.

(d) * * *

(2) * * *

(iv) A certificate of representation submitted by a designated representative or an application for a general account submitted by an authorized account representative under subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter; or

(v) A certificate of representation submitted by a designated representative under part 98 of this chapter;

* * * * *

(5) Any provision or requirement of subparts AA through II, AAA through III, or AAAA through IIII of part 96 of this chapter or subparts AA through II, AAA through III, or AAAA through IIII of part 97 of this chapter, including the standard requirements under § 96.106, § 96.206, or § 96.306 of this chapter or § 97.106, § 97.206, or § 97.306 of this chapter, respectively, and any emission monitoring or reporting requirements;

(6) Any provision or requirement of subpart AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, or GGGGG of part 97 of this chapter, including the standard requirements under § 97.406, § 97.506, § 97.606, § 97.706, § 97.806, § 97.906, or § 97.1006 of this chapter, respectively, and any emission monitoring or reporting requirements; or

* * * * *

■ 22. Amend § 78.4 by:

■ a. Revising paragraph (a)(1)(i);

■ b. In paragraph (a)(1)(ii), designating the first sentence as paragraph (a)(1)(ii)(A) and designating the second sentence as paragraph (a)(1)(ii)(B);

■ c. In paragraph (a)(1)(iii), designating the first sentence as paragraph (a)(1)(iii)(A) and designating the second sentence as paragraph (a)(1)(iii)(B); and

■ d. Redesignating paragraph (a)(1)(iv) as paragraph (a)(1)(v) and adding a new paragraph (a)(1)(iv).

The revision and addition read as follows:

§ 78.4 Filings.

(a) * * *

(1) * * *

(i)(A) Any filings on behalf of owners and operators of an affected unit or affected source under parts 72, 73, 74, 75, 76, and 77 of this chapter shall be signed by the designated representative.

(B) Any filings on behalf of persons with an ownership interest with respect to allowances in a general account under parts 72, 73, 74, 75, 76, and 77 of this chapter shall be signed by the authorized account representative.

* * * * *

(iv)(A) Any filings on behalf of owners and operators of a CSAPR NO_X Annual unit or CSAPR NO_X Annual source, CSAPR NO_X Ozone Season Group 1 unit or CSAPR NO_X Ozone Season Group 1 source, CSAPR NO_X Ozone Season Group 2 unit or CSAPR NO_X Ozone Season Group 2 source, CSAPR NO_X Ozone Season Group 3 unit or CSAPR NO_X Ozone Season Group 3 source, CSAPR SO_2 Group 1 unit or CSAPR SO_2 Group 1 source, CSAPR SO_2 Group 2 unit or CSAPR SO_2 Group 2 source, or Texas SO_2 Trading Program unit or Texas SO_2 Trading Program source shall be signed by the designated representative.

(B) Any filings on behalf of persons with an ownership interest with respect to CSAPR NO_X Annual allowances, CSAPR NO_X Ozone Season Group 1 allowances, CSAPR NO_X Ozone Season Group 2 allowances, CSAPR NO_X Ozone Season Group 3 allowances, CSAPR SO_2 Group 1 allowances, CSAPR SO_2 Group 2 allowances, or Texas SO_2 Trading Program allowances in a general account shall be signed by the authorized account representative.

* * * * *

§ 78.5 [Amended]

■ 23. In § 78.5, amend paragraph (a) by removing from the second sentence ''presented, the issue could not'' and adding in its place ''presented or the issue could not''.

§ 78.6 [Amended]

■ 24. Amend § 78.6 by:

■ a. In paragraph (a), removing ''of this part'';

■ b. In paragraph (b)(2) introductory text, removing ''in part, it will:'' and adding in its place ''in part:'';

■ c. In paragraph (b)(2)(i), removing ''Identify the portions'' and adding in its place ''It will identify the portions'', and removing the comma after ''contested''; and

■ d. In paragraph (b)(2)(ii), removing ''Refer the disputed'' and adding in its place ''It will refer the disputed''.

§ 78.10 [Amended]

■ 25. Amend § 78.10 by:

■ a. In paragraph (a)(3), removing ''this paragraph'' and adding in its place ''paragraph (a)(1) or (2) of this section'';

■ b. In paragraph (b), adding a comma after ''knowingly caused to be made''; and

■ c. In paragraph (c), removing ''under § 78.9 of this part. This prohibition terminates'' and adding in its place ''under § 78.9. These prohibitions terminate''.

§ 78.11 [Amended]

■ 26. Amend § 78.11 by:

■ a. In paragraph (a), removing ''of this part'' each time it appears; and

■ b. In paragraph (b) introductory text, removing ''of'' and adding in its place ''or''.

§ 78.12 [Amended]

■ 27. Amend § 78.12 by:

■ a. In paragraph (a)(1), removing ''warrants review.'' and adding in its place ''warrants review; and''; and

■ b. In paragraph (a)(2), adding a comma after ''Acid Rain permit''.

§ 78.13 [Amended]

■ 28. In § 78.13, amend paragraph (a)(3) by removing ''of this part''.

§ 78.14 [Amended]

■ 29. In § 78.14, amend paragraphs (a)(4) and (7) and (c)(4) by removing ''of this part''.

§ 78.15 [Amended]

■ 30. In § 78.15, amend paragraphs (a) and (e) by removing ''of this part'' each time it appears.

§ 78.16 [Amended]

■ 31. In § 78.16, amend paragraph (b) introductory text by removing the period at the end of the paragraph and adding in its place a colon.

§ 78.17 [Amended]

■ 32. Amend § 78.17 by removing ''of this part''.

§ 78.18 [Amended]

■ 33. In § 78.18, amend paragraphs (a) and (b)(1) and (2) by removing ''of this part''.

§ 78.19 [Amended]

■ 34. Amend § 78.19 by:
■ a. In paragraph (d), in the second sentence, adding ''the'' before ''Environmental Appeals Board''; and
■ b. In paragraph (e), removing ''of this part''.

§ 78.20 [Amended]

■ 35. Amend § 78.20 by:
■ a. In paragraph (a)(2), removing ''§ 78.12(a) (1) and (2) of this part.'' and adding in its place ''§ 78.12(a)(1) and (2).''; and
■ b. In paragraph (c), removing ''of this part''.

PART 97—FEDERAL NO_X BUDGET TRADING PROGRAM, CAIR NO_X AND SO_2 TRADING PROGRAMS, CSAPR NO_X AND SO_2 TRADING PROGRAMS, AND TEXAS SO_2 TRADING PROGRAM

■ 36. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7491, 7601, and 7651, *et seq.*

Subpart AAAAA—CSAPR NO_X Annual Trading Program

■ 37. Amend § 97.402 by:
■ a. Removing the definition of ''Allowable NO_X emission rate'';
■ b. Revising the definition of ''Allowance transfer deadline'';
■ c. In the definition of ''Alternate designated representative'', adding ''CSAPR NO_X Ozone Season Group 3 Trading Program,'' before ''CSAPR SO_2 Group 1 Trading Program,'';
■ d. In the definition of ''Biomass'', paragraph (3) introductory text, removing the semicolon and adding in its place a colon;
■ e. Removing the definition of ''Coal-derived fuel'';
■ f. In the definition of ''Cogeneration unit'', paragraph (2)(i)(B), removing ''15 percent of total energy output.'' and adding in its place ''15 percent of total energy output; or'';
■ g. In the definition of ''Common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2021, or as of July 1 immediately after such deadline for such a control period in 2021 or thereafter, the same'', and removing ''located'' before ''in a State'';
■ h. Revising the definitions of ''Common designated representative's assurance level'' and ''Common designated representative's share'';
■ i. In the definition of ''CSAPR NO_X Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (13) through (15)'';
■ j. In the definition of ''CSAPR NO_X Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16)'', and removing ''§ 52.38(b)(6) or (9)'' and adding in its place ''§ 52.38(b)(9)'';
■ k. Adding in alphabetical order a definition for ''CSAPR NO_X Ozone Season Group 3 Trading Program'';
■ l. In the definition of ''Designated representative'', adding ''CSAPR NO_X Ozone Season Group 3 Trading Program,'' before ''CSAPR SO_2 Group 1 Trading Program,'';
■ m. In the definition of ''Fossil fuel'', paragraph (2), removing ''and (ii),'' and adding in its place ''and (b)(2)(ii),'';
■ n. Removing the definition of ''Heat rate''; and
■ o. Adding in alphabetical order a definition for ''Nitrogen oxides''.

The revisions and additions read as follows:

§ 97.402 Definitions.

* * * * *

Allowance transfer deadline means, for a control period before 2021, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR NO_X Annual allowance transfer must be submitted for recordation in a CSAPR NO_X Annual source's compliance account in order to be available for use in complying with the source's CSAPR NO_X Annual emissions limitation for such control period in accordance with §§ 97.406 and 97.424.

* * * * *

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.406(c)(2)(iii), the amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_X Annual allowances allocated for such control period to the group of one or more CSAPR NO_X Annual units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR NO_X Annual allowances purchased by an owner or operator of such CSAPR NO_X Annual units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR NO_X Annual units in accordance with the CSAPR NO_X Annual allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(a)(4) or (5) of this chapter, multiplied by the sum of the State NO_X Annual trading budget under § 97.410(a) and the State's variability limit under § 97.410(b) for such control period, and divided by such State NO_X Annual trading budget.

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of NO_X emissions from all CSAPR NO_X Annual units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of NO_X emissions during such control period from the group of one or more CSAPR NO_X Annual units in such State (and such Indian country) having the common designated representative for such control period.

* * * * *

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

* * * * *

§ 97.404 [Amended]

■ 38. In § 97.404, amend paragraph (b) introductory text by removing ''or (2)(i)'' and adding in its place ''or (b)(2)(i)''.

§ 97.405 [Amended]

■ 39. In § 97.405, amend paragraph (b) by removing the paragraph heading.

§ 97.406 [Amended]

■ 40. In § 97.406, amend paragraph (c)(4)(ii) by removing ''and (2)(i)'' and adding in its place ''and (c)(2)(i)''.

§ 97.410 [Amended]

■ 41. Amend § 97.410 by:
■ a. In paragraph (a) introductory text, removing ''2015 and thereafter'' and adding in its place ''the years indicated'';
■ b. In paragraph (a)(1)(v), removing ''1,439'' and adding in its place ''1,441'';
■ c. In paragraph (a)(2)(v), removing ''1,075'' and adding in its place ''1,074'';
■ d. In paragraph (a)(3)(v), removing ''3,830'' and adding in its place ''3,831'';
■ e. In paragraph (a)(4)(v), removing ''3,253'' and adding in its place ''3,256'';
■ f. In paragraph (a)(5)(v), removing ''712'' and adding in its place ''715'';
■ g. In paragraph (a)(8)(v), removing ''331'' and adding in its place ''333'';
■ h. In paragraph (a)(9)(v), removing ''1,198'' and adding in its place ''1,201'';
■ i. In paragraph (a)(10)(v), removing ''561'' and adding in its place ''565'';
■ j. In paragraph (a)(11)(v), removing ''2,925'' and adding in its place ''2,929'';
■ k. In paragraph (a)(12)(v), removing ''1,772'' and adding in its place ''1,771'';
■ l. In paragraph (a)(13)(v), removing ''159'' and adding in its place ''155'';
■ m. In paragraph (a)(14)(v), removing ''412'' and adding in its place ''410'';
■ n. In paragraph (a)(17)(v), removing ''2,384'' and adding in its place ''2,383'';
■ o. In paragraph (a)(18)(v), removing ''617'' and adding in its place ''620'';
■ p. In paragraph (a)(19)(v), removing ''387'' and adding in its place ''381'';
■ q. Removing and reserving paragraphs (a)(20)(iv) through (vi);
■ r. In paragraph (a)(21)(v), removing ''1,662'' and adding in its place ''1,663'';
■ s. In paragraph (a)(22)(v), removing ''2,729'' and adding in its place ''2,730''; and
■ t. Removing and reserving paragraph (b)(20).

■ 42. Amend § 97.411 by:
■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), and in the newly redesignated paragraph, removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2020,'', and removing ''and (12),'' and adding in its place ''and (12) and §§ 97.406(b)(2) and 97.430 through 97.435,'';
■ b. Adding paragraph (b)(1)(i)(B);
■ c. In paragraph (b)(1)(ii)(A), removing ''§ 97.412(a)(2) through (7) and (12) and §§ 97.406(b)(2) and 97.430 through 97.435.'' and adding in its place ''the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable.'';
■ d. Revising paragraph (b)(1)(ii)(B);
■ e. In paragraph (b)(1)(iii), removing ''such control period contains'' and adding in its place ''a control period before 2021 contains'';
■ f. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2021, or in paragraph (b)(1)(ii) of this section for a control period in 2021 or thereafter,'';
■ g. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), and in the newly redesignated paragraph, removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2020,'', and removing ''and (12),'' and adding in its place ''and (12) and §§ 97.406(b)(2) and 97.430 through 97.435,'';
■ h. Adding paragraph (b)(2)(i)(B);
■ i. In paragraph (b)(2)(ii)(A), removing ''§ 97.412(b)(2) through (7) and (12) and §§ 97.406(b)(2) and 97.430 through 97.435.'' and adding in its place ''the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable.'';
■ j. Revising paragraph (b)(2)(ii)(B);
■ k. In paragraph (b)(2)(iii), removing ''such control period contains'' and adding in its place ''a control period before 2021 contains'';
■ l. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2021, or in paragraph (b)(2)(ii) of this section for a control period in 2021 or thereafter,'';
■ m. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';
■ n. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';
■ o. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;
■ p. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision''; and
■ q. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph.

The additions and revisions read as follows:

§ 97.411 Timing requirements for CSAPR NO_X Annual allowance allocations.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Annual allowance allocation to each CSAPR NO_X Annual unit in a State, in accordance with § 97.412(a)(2) through (7), (10), and (12) and §§ 97.406(b)(2) and 97.430 through 97.435, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Annual allowance allocation to each CSAPR NO_X Annual unit in Indian country within the borders of a State, in accordance with § 97.412(b)(2) through (7), (10), and (12) and §§ 97.406(b)(2) and 97.430 through 97.435, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any

objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ 43. Amend § 97.412 by:
■ a. Adding a paragraph heading to paragraph (a) introductory text;
■ b. In paragraph (a)(1)(i), removing ''§ 97.411(a)(1);'' and adding in its place ''§ 97.411(a)(1) and that have deadlines for certification of monitoring systems under § 97.430(b) not later than December 31 of the year of the control period;'';
■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for allocations for a control period before 2021, or that operate during such control period, for allocations for a control period in 2021 or thereafter; or'';
■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';
■ e. Revising paragraph (a)(3)(ii);
■ f. In paragraph (a)(3)(iv), removing ''resumes operation.'' and adding in its place ''resumes operation, for allocations for a control period before 2021, or the control period in which the unit resumes operation, for allocations for a control period in 2021 or thereafter.'';
■ g. In paragraph (a)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for allocations for a control period before 2021, or the unit's total tons of NO_X emissions during the control period, for allocations for a control period in 2021 or thereafter.'';
■ h. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';
■ i. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ j. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2021, if, after completion'';
■ k. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2021, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated'';
■ l. Redesignating paragraph (a)(11) as paragraph (a)(11)(i) and in the newly redesignated paragraph, removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ m. Adding paragraph (a)(11)(ii);
■ n. Revising paragraph (a)(12);
■ o. Adding a paragraph heading to paragraph (b) introductory text and removing ''located'' before ''in Indian country'';
■ p. In paragraph (b)(1)(i), removing ''§ 97.411(a)(1); or'' and adding in its place ''§ 97.411(a)(1) and that have deadlines for certification of monitoring systems under § 97.430(b) not later than December 31 of the year of the control period; or'';
■ q. Revising paragraph (b)(3)(ii);
■ r. In paragraph (b)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for allocations for a control period before 2021, or the unit's total tons of NO_X emissions during the control period, for allocations for a control period in 2021 or thereafter.'';
■ s. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';
■ t. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ u. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2021, if, after completion'';
■ v. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2021, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated'';
■ w. Redesignating paragraph (b)(11) as paragraph (b)(11)(i) and in the newly redesignated paragraph, removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ x. Adding paragraph (b)(11)(ii); and
■ y. Revising paragraph (b)(12).

The additions and revisions read as follows:

§ 97.412 CSAPR NO_X Annual allowance allocations to new units.

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii)(A) The first control period after the control period in which the CSAPR NO_X Annual unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR NO_X Annual unit's monitoring systems under § 97.430(b), for allocations for a control period in 2021 or thereafter;

* * * * *

(11) * * *

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(1)(i), (ii), and (v), of the amount of CSAPR NO_X Annual allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Annual unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2021 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2021 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Annual units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Annual allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii)(A) The first control period after the control period in which the CSAPR NO_X Annual unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR NO_X Annual unit's monitoring systems under § 97.430(b), for allocations for a control period in 2021 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.411(b)(2)(i), (ii), and (v), of the amount of CSAPR NO_X Annual allowances allocated under paragraphs

(b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Annual unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2021 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2021 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Annual units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Annual allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.420 [Amended]

■ 44. Amend § 97.420 by:

■ a. In paragraph (c)(1)(ii)(D), adding ''; and'' after the closing quotation mark; and

■ b. In paragraph (c)(3)(iii)(B), removing ''to NO_X'' and adding in its place ''to CSAPR NO_X''.

■ 45. Amend § 97.421 by:

■ a. Redesignating paragraph (f) as paragraph (f)(1) and in the newly redesignated paragraph, removing ''By July 1, 2019 and July 1 of each year thereafter,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';

■ b. Adding paragraph (f)(2);

■ c. Redesignating paragraph (g) as paragraph (g)(1) and in the newly redesignated paragraph, removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2020,'';

■ d. Adding paragraph (g)(2);

■ e. Redesignating paragraph (h) as paragraph (h)(1) and in the newly redesignated paragraph, removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2020,'';

■ f. Adding paragraph (h)(2); and

■ g. In paragraphs (i) and (j), removing ''By February 15, 2016 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2016 through 2021,''.

The additions read as follows:

§ 97.421 Recordation of CSAPR NO_X Annual allowance allocations and auction results.

* * * * *

(f) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Annual allowances auctioned to CSAPR NO_X Annual units, in accordance with § 97.411(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) * * *

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Annual allowances auctioned to CSAPR NO_X Annual units, in accordance with § 97.412(a), or with a SIP revision approved under § 52.38(a)(4) or (5) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Annual source's compliance account the CSAPR NO_X Annual allowances allocated to the CSAPR NO_X Annual units at the source in accordance with § 97.412(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 46. Amend § 97.424 by adding a paragraph heading to paragraph (c) and revising paragraph (c)(1) to read as follows:

§ 97.424 Compliance with CSAPR NO_X Annual emissions limitation.

* * * * *

(c) *Selection of CSAPR NO_X Annual allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR NO_X Annual allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR NO_X Annual source and the appropriate serial numbers.

* * * * *

■ 47. Amend § 97.425 by:

■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);

■ b. Removing paragraphs (b)(2) introductory text and (b)(2)(i) and (ii) and redesignating paragraphs (b)(2)(iii) introductory text and (b)(2)(iii)(A) and (B) as paragraphs (b)(2) introductory text and (b)(2)(i) and (ii), respectively;

■ c. In newly redesignated paragraph (b)(2) introductory text, removing ''the notice of data availability required in paragraph (b)(2)(ii) of this section and the calculations referenced by the relevant notice'' and adding in its place ''each notice'';

■ d. In newly redesignated paragraph (b)(2)(i), removing ''the relevant notice required under paragraph (b)(1)(ii) of this section and referenced in the notice required under paragraph (b)(2)(ii) of this section'' and adding in its place ''such notice'';

■ e. In newly redesignated paragraph (b)(2)(ii), removing ''(b)(2)(iii)(A)'' and adding in its place ''(b)(2)(i)'' each time it appears, and adding ''results of the'' before ''calculations incorporating any adjustments'';

■ f. In paragraphs (b)(3), (b)(4)(i), (b)(5), (b)(6) introductory text, and (b)(6)(i), removing ''(b)(2)(iii)(B)'' and adding in its place ''(b)(2)(ii)'' each time it appears;

■ g. Removing and reserving paragraph (b)(6)(ii); and

■ h. In paragraph (b)(6)(iii) introductory text, removing ''paragraphs (b)(6)(i) and (ii)'' and adding in its place ''paragraph (b)(6)(i)''.

The revisions read as follows:

§ 97.425 Compliance with CSAPR NO_X Annual assurance provisions.

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2021 and August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total NO_X emissions exceed the respective State assurance levels for such control period—

(A) Calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR NO_X Annual sources and units in such State (and such Indian country), the common designated representative's share of the total NO_X emissions from all CSAPR NO_X Annual units at CSAPR NO_X Annual sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR NO_X Annual allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.406(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the NO_X emissions from each CSAPR NO_X Annual source in each such State (and Indian country within the borders of such State).

* * * * *

■ 48. Amend § 97.426 by:

■ a. In paragraph (b), removing ''§ 97.428.'' and adding in its place ''§ 97.428 or paragraph (c) of this section.''; and

■ b. Adding paragraph (c).

The addition reads as follows:

§ 97.426 Banking.

* * * * *

(c) At any time after the allowance transfer deadline for the last control period for which a State NO_X Annual trading budget is set forth in § 97.410(a) for a given State, the Administrator may record a transfer of any CSAPR NO_X Annual allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

§ 97.431 [Amended]

■ 49. In § 97.431, amend paragraph (d)(3) introductory text by removing ''with'' in the last sentence.

§ 97.434 [Amended]

■ 50. In § 97.434, amend paragraph (d)(3) by adding ''CSAPR NO_X Ozone Season Group 3 Trading Program,'' before ''CSAPR SO_2 Group 1 Trading Program,''.

Subpart BBBBB—CSAPR NO_X Ozone Season Group 1 Trading Program

■ 51. Amend § 97.502 by:

■ a. Removing the definition of ''Allowable NO_X emission rate'';

■ b. Revising the definition of ''Allowance transfer deadline'';

■ c. In the definition of ''Biomass'', paragraph (3) introductory text, removing the semicolon and adding in its place a colon;

■ d. Removing the definition of ''Coal-derived fuel'';

■ e. In the definition of ''Cogeneration unit'', paragraph (2)(i)(B), removing ''15 percent of total energy output.'' and adding in its place ''15 percent of total energy output; or'';

■ f. In the definition of ''Common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2021, or as of July 1 immediately after such deadline for such a control period in 2021 or thereafter, the same'', and removing ''located'' before ''in a State'';

■ g. Revising the definitions of ''Common designated representative's assurance level'' and ''Common designated representative's share'';

■ h. In the definition of ''CSAPR NO_X Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (13) through (15)'';

■ i. In the definition of ''CSAPR NO_X Ozone Season Group 2 allowance'', removing ''§ 97.526(c),'' and adding in its place ''§ 97.526(d),'', and removing ''§ 52.38(b)(6), (7), (8), or (9)'' and adding in its place ''§ 52.38(b)(7), (8), or (9)'';

■ j. In the definition of ''CSAPR NO_X Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16)'', and removing ''§ 52.38(b)(6) or (9)'' and adding in its place ''§ 52.38(b)(9)'';

■ k. Adding in alphabetical order definitions for ''CSAPR NO_X Ozone Season Group 3 allowance'' and ''CSAPR NO_X Ozone Season Group 3 Trading Program'';

■ l. In the definition of ''Fossil fuel'', paragraph (2), removing ''and (ii),'' and adding in its place ''and (b)(2)(ii),'';

■ m. Removing the definition of ''Heat rate'';

■ n. Adding in alphabetical order a definition for ''Nitrogen oxides''; and

■ o. In the definition of ''State'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (13) through (15)''.

The revisions and additions read as follows:

§ 97.502 Definitions.

* * * * *

Allowance transfer deadline means, for a control period in 2015 or 2016, midnight of December 1 immediately after such control period or, for a control period in a year from 2017 through 2020, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such December 1, March 1, or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR NO_X Ozone Season Group 1 allowance transfer must be submitted for recordation in a CSAPR NO_X Ozone Season Group 1 source's compliance account in order to be available for use in complying with the source's CSAPR NO_X Ozone Season Group 1 emissions limitation for such control period in accordance with §§ 97.506 and 97.524.

* * * * *

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.506(c)(2)(iii), the amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_X Ozone Season Group 1 allowances allocated for such control period to the group of one or more CSAPR NO_X Ozone Season Group 1 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR NO_X Ozone Season

Group 1 allowances purchased by an owner or operator of such CSAPR NO_X Ozone Season Group 1 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR NO_X Ozone Season Group 1 units in accordance with the CSAPR NO_X Ozone Season Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(4) or (5) of this chapter, multiplied by the sum of the State NO_X Ozone Season Group 1 trading budget under § 97.510(a) and the State's variability limit under § 97.510(b) for such control period, and divided by such State NO_X Ozone Season Group 1 trading budget.

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of NO_X emissions from all CSAPR NO_X Ozone Season Group 1 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of NO_X emissions during such control period from the group of one or more CSAPR NO_X Ozone Season Group 1 units in such State (and such Indian country) having the common designated representative for such control period.

* * * * *

CSAPR NO_X Ozone Season Group 3 allowance means a limited authorization issued and allocated or auctioned by the Administrator under subpart GGGGG of this part, § 97.526(d), or § 97.826(d), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Ozone Season Group 3 Trading Program.

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

* * * * *

§ 97.504 [Amended]

■ 52. In § 97.504, amend paragraph (b) introductory text by removing ''or (2)(i)'' and adding in its place ''or (b)(2)(i)''.

§ 97.505 [Amended]

■ 53. In § 97.505, amend paragraph (b) by removing the paragraph heading.

§ 97.506 [Amended]

■ 54. In § 97.506, amend paragraph (c)(4)(ii) by removing ''and (2)(i)'' and adding in its place ''and (c)(2)(i)''.

§ 97.510 [Amended]

■ 55. Amend § 97.510 by:
■ a. In paragraph (a) introductory text, removing ''2015 and thereafter'' and adding in its place ''the years indicated'';
■ b. Removing and reserving paragraphs (a)(1)(iv) and (v), (a)(2)(iv) and (v), and (a)(3)(iv) through (vi);
■ c. In paragraph (a)(4)(v), removing ''481'' and adding in its place ''485''; and
■ d. Removing and reserving paragraphs (a)(5)(iv) and (v), (a)(6)(iv) and (v), (a)(7)(iv) through (vi), (a)(8)(iv) and (v), (a)(9)(iv) through (vi), (a)(10)(iv) and (v), (a)(11)(iv) through (vi), (a)(12)(iv) through (vi), (a)(13)(iv) and (v), (a)(14)(iv) and (v), (a)(15)(iv) through (vi), (a)(16)(iv) through (vi), (a)(17)(iv) and (v), (a)(18)(iv) and (v), (a)(19)(iv) and (v), (a)(20)(iv) through (vi), (a)(21)(iv) and (v), (a)(22)(iv) through (vi), (a)(23)(iv) and (v), (a)(24)(iv) and (v), (a)(25)(iv) through (vi), and (b)(1) through (3) and (5) through (25).

■ 56. Amend § 97.511 by:
■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), and in newly redesignated paragraph, removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2020,'', and removing ''and (12),'' and adding in its place ''and (12) and §§ 97.506(b)(2) and 97.530 through 97.535,'';
■ b. Adding paragraph (b)(1)(i)(B);
■ c. In paragraph (b)(1)(ii)(A), removing ''§ 97.512(a)(2) through (7) and (12) and §§ 97.506(b)(2) and 97.530 through 97.535.'' and adding in its place ''the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable.'';
■ d. Revising paragraph (b)(1)(ii)(B);
■ e. In paragraph (b)(1)(iii)(B), removing ''2017 or any subsequent year'' and adding in its place ''a year from 2017 through 2020'';
■ f. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2021, or in paragraph (b)(1)(ii) of this section for a control period in 2021 or thereafter,'';
■ g. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), and in the newly redesignated paragraph, removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2020,'', and removing ''and (12),'' and adding in its place ''and (12) and §§ 97.506(b)(2) and 97.530 through 97.535,'';
■ h. Adding paragraph (b)(2)(i)(B);
■ i. In paragraph (b)(2)(ii)(A), removing ''§ 97.512(b)(2) through (7) and (12) and §§ 97.506(b)(2) and 97.530 through 97.535.'' and adding in its place ''the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable.'';
■ j. Revising paragraph (b)(2)(ii)(B);
■ k. In paragraph (b)(2)(iii)(B), removing ''2017 or any subsequent year'' and adding in its place ''a year from 2017 through 2020'';
■ l. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2021, or in paragraph (b)(2)(ii) of this section for a control period in 2021 or thereafter,'';
■ m. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';
■ n. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';
■ o. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;
■ p. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision''; and
■ q. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph.

The additions and revisions read as follows:

§ 97.511 Timing requirements for CSAPR NO_X Ozone Season Group 1 allowance allocations.

* * * * *

(b) * * *
(1) * * *
(i) * * *

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator

will calculate the CSAPR NO_X Ozone Season Group 1 allowance allocation to each CSAPR NO_X Ozone Season Group 1 unit in a State, in accordance with § 97.512(a)(2) through (7), (10), and (12) and §§ 97.506(b)(2) and 97.530 through 97.535, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 1 allowance allocation to each CSAPR NO_X Ozone Season Group 1 unit in Indian country within the borders of a State, in accordance with § 97.512(b)(2) through (7), (10), and (12) and §§ 97.506(b)(2) and 97.530 through 97.535, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ 57. Amend § 97.512 by:

■ a. Adding a paragraph heading to paragraph (a) introductory text ;

■ b. In paragraph (a)(1)(i), removing ''§ 97.511(a)(1);'' and adding in its place ''§ 97.511(a)(1) and that have deadlines for certification of monitoring systems under § 97.530(b) not later than September 30 of the year of the control period;'';

■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for allocations for a control period before 2021, or that operate during such control period, for allocations for a control period in 2021 or thereafter; or'';

■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';

■ e. Revising paragraph (a)(3)(ii);

■ f. In paragraph (a)(3)(iv), removing ''resumes operation.'' and adding in its place ''resumes operation, for allocations for a control period before 2021, or the control period in which the unit resumes operation, for allocations for a control period in 2021 or thereafter.'';

■ g. In paragraph (a)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for allocations for a control period before 2021, or the unit's total tons of NO_X emissions during the control period, for allocations for a control period in 2021 or thereafter.'';

■ h. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';

■ i. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';

■ j. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2021, if, after completion'';

■ k. In paragraph (a)(9)(i)(B), removing ''2017 or any subsequent year,'' and adding in its place ''2017, 2018, 2019, or 2020,'';

■ l. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2021, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated'';

■ m. Redesignating paragraph (a)(11) as paragraph (a)(11)(i) and in the newly redesignated paragraph, removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';

■ n. Adding paragraph (a)(11)(ii);

■ o. Revising paragraph (a)(12);

■ p. Adding a paragraph heading to paragraph (b) introductory text and removing ''located'' before ''in Indian country'';

■ q. In paragraph (b)(1)(i), removing ''§ 97.511(a)(1); or'' and adding in its place ''§ 97.511(a)(1) and that have deadlines for certification of monitoring systems under § 97.530(b) not later than September 30 of the year of the control period; or'';

■ r. Revising paragraph (b)(3)(ii);

■ s. In paragraph (b)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for allocations for a control period before 2021, or the unit's total tons of NO_X emissions during the control period, for allocations for a control period in 2021 or thereafter.'';

■ t. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';

■ u. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';

■ v. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2021, if, after completion'';

■ w. In paragraph (b)(9)(i)(B), removing ''2017 or any subsequent year,'' and adding in its place ''2017, 2018, 2019, or 2020,'';

■ x. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2021, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated'';

■ y. Redesignating paragraph (b)(11) as paragraph (b)(11)(i) and in the newly redesignated paragraph, removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';

■ z. Adding paragraph (b)(11)(ii); and

■ aa. Revising paragraph (b)(12).

The additions and revisions read as follows:

§ 97.512 CSAPR NO_X Ozone Season Group 1 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii)(A) The first control period after the control period in which the CSAPR NO_X Ozone Season Group 1 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR NO_X Ozone Season Group 1 unit's monitoring systems under § 97.530(b), for allocations for a control period in 2021 or thereafter;

* * * * *

(11) * * *

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.511(b)(1)(i), (ii), and (v), of the amount of CSAPR NO_X Ozone Season Group 1 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2021 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2021 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 1 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Ozone Season Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii)(A) The first control period after the control period in which the CSAPR NO_X Ozone Season Group 1 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR NO_X Ozone Season Group 1 unit's monitoring systems under § 97.530(b), for allocations for a control period in 2021 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.511(b)(2)(i), (ii), and (v), of the amount of CSAPR NO_X Ozone Season Group 1 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2021 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2021 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 1 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Ozone Season Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.520 [Amended]

■ 58. Amend § 97.520 by:

■ a. In paragraph (c)(1)(ii)(D), adding ''; and'' after the closing quotation mark; and

■ b. In paragraph (c)(3)(iii)(B), removing ''to NO_X'' and adding in its place ''to CSAPR NO_X''.

■ 59. Amend § 97.521 by:

■ a. Redesignating paragraph (f) as paragraph (f)(1) and in the newly redesignated paragraph, removing ''By July 1, 2019 and July 1 of each year thereafter,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';

■ b. Adding paragraph (f)(2);

■ c. Redesignating paragraph (g) as paragraph (g)(1) and in the newly redesignated paragraph, removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2020,'';

■ d. Adding paragraph (g)(2);

■ e. Redesignating paragraph (h) as paragraph (h)(1) and in the newly redesignated paragraph, removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2020,'';

■ f. Adding paragraph (h)(2); and

■ g. In paragraphs (i)(2) and (j)(2), removing ''By February 15, 2018 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2018 through 2021,''.

The additions read as follows:

§ 97.521 Recordation of CSAPR NO_X Ozone Season Group 1 allowance allocations and auction results.

* * * * *

(f) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 1 source's compliance account the CSAPR NO_X Ozone Season Group 1 allowances allocated to the CSAPR NO_X Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 1 allowances auctioned to CSAPR NO_X Ozone Season Group 1 units, in accordance with § 97.511(a), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) * * *

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 1 source's compliance account the CSAPR NO_X Ozone Season Group 1 allowances allocated to the CSAPR NO_X Ozone Season Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 1 allowances auctioned to CSAPR NO_X Ozone Season Group 1 units, in accordance with § 97.512(a), or with a SIP revision approved under § 52.38(b)(4) or (5) of this chapter, for

the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 1 source's compliance account the CSAPR NO_X Ozone Season Group 1 allowances allocated to the CSAPR NO_X Ozone Season Group 1 units at the source in accordance with § 97.512(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 60. Amend § 97.524 by adding a paragraph heading to paragraph (c) and revising paragraph (c)(1) to read as follows:

§ 97.524 Compliance with CSAPR NO_X Ozone Season Group 1 emissions limitation.

* * * * *

(c) *Selection of CSAPR NO_X Ozone Season Group 1 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR NO_X Ozone Season Group 1 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR NO_X Ozone Season Group 1 source and the appropriate serial numbers.

* * * * *

■ 61. Amend § 97.525 by:

■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);

■ b. Removing paragraphs (b)(2) introductory text and (b)(2)(i) and (ii) and redesignating paragraphs (b)(2)(iii) introductory text and (b)(2)(iii)(A) and (B) as paragraphs (b)(2) introductory text and (b)(2)(i) and (ii), respectively;

■ c. In newly redesignated paragraph (b)(2) introductory text, removing ''the notice of data availability required in paragraph (b)(2)(ii) of this section and the calculations referenced by the relevant notice'' and adding in its place ''each notice'';

■ d. In newly redesignated paragraph (b)(2)(i), removing ''the relevant notice required under paragraph (b)(1)(ii) of this section and referenced in the notice required under paragraph (b)(2)(ii) of this section'' and adding in its place ''such notice'';

■ e. In newly redesignated paragraph (b)(2)(ii), removing ''(b)(2)(iii)(A)'' and adding in its place ''(b)(2)(i)'' each time it appears, and adding ''results of the'' before ''calculations incorporating any adjustments'';

■ f. In paragraphs (b)(3), (b)(4)(i), (b)(5), (b)(6) introductory text, and (b)(6)(i), removing ''(b)(2)(iii)(B)'' and adding in its place ''(b)(2)(ii)'' each time it appears;

■ g. Removing and reserving paragraph (b)(6)(ii); and

■ h. In paragraph (b)(6)(iii) introductory text, removing ''paragraphs (b)(6)(i) and (ii)'' and adding in its place ''paragraph (b)(6)(i)''.

The revisions read as follows:

§ 97.525 Compliance with CSAPR NO_X Ozone Season Group 1 assurance provisions.

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2021 and August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total NO_X emissions exceed the respective State assurance levels for such control period—

(A) Calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR NO_X Ozone Season Group 1 sources and units in such State (and such Indian country), the common designated representative's share of the total NO_X emissions from all CSAPR NO_X Ozone Season Group 1 units at CSAPR NO_X Ozone Season Group 1 sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR NO_X Ozone Season Group 1 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.506(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the NO_X emissions from each CSAPR NO_X Ozone Season Group 1 source in each such State (and Indian country within the borders of such State).

* * * * *

■ 62. Amend § 97.526 by:

■ a. Revising the section heading;

■ b. In paragraph (b), removing ''removed under paragraph (c)'' and adding in its place ''paragraph (c) or (d)'';

■ c. Revising paragraph (c); and

■ d. Adding paragraphs (d) and (e).

The revisions and additions read as follows:

§ 97.526 Banking and conversion.

* * * * *

(c) At any time after the allowance transfer deadline for the last control period for which a State NO_X Ozone Season Group 1 trading budget is set forth in § 97.510(a) for a given State and after completion of the procedures under paragraph (d)(1) of this section, the Administrator may record a transfer of any CSAPR NO_X Ozone Season Group 1 allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

(d) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b)(4) or (5) of this chapter:

(1) As soon as practicable after the completion of deductions under § 97.524 for the control period in 2016, but not later than March 1, 2018, the Administrator will temporarily suspend acceptance of CSAPR NO_X Ozone Season Group 1 allowance transfers submitted under § 97.522 and, before resuming acceptance of such transfers, will take the actions in paragraphs (d)(1)(i) through (iii) of this section with regard to every general account and every compliance account except a compliance account for a CSAPR NO_X Ozone Season Group 1 source in a State listed in § 52.38(b)(2)(i) of this chapter (or Indian country within the borders of such a State):

(i) The Administrator will deduct all CSAPR NO_X Ozone Season Group 1 allowances allocated for the control periods in 2015 and 2016 from each such account.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of the sum of all

CSAPR NO_X Ozone Season Group 1 allowances deducted from all such accounts under paragraph (d)(1)(i) of this section divided by the product of 1.5 multiplied by the sum of the variability limits for the control period in 2017 set forth in § 97.810(b) for all States except a State listed in § 52.38(b)(2)(i) of this chapter.

(iii) The Administrator will allocate and record in each such account an amount of CSAPR NO_X Ozone Season Group 2 allowances for the control period in 2017 computed as the quotient, rounded up to the nearest allowance, of the number of CSAPR NO_X Ozone Season Group 1 allowances deducted from such account under paragraph (d)(1)(i) of this section divided by the conversion factor determined under paragraph (d)(1)(ii) of this section, except as provided in paragraph (d)(1)(iv) of this section.

(iv) Where, pursuant to paragraph (d)(1)(i) of this section, the Administrator deducts CSAPR NO_X Ozone Season Group 1 allowances from the compliance account for a source in a State not listed in § 52.38(b)(2)(iii) or (iv) of this chapter (or Indian country within the borders of such a State), the Administrator will not record CSAPR NO_X Ozone Season Group 2 allowances in that compliance account but instead will allocate and record the amount of CSAPR NO_X Ozone Season Group 2 allowances for the control period in 2017 computed for such source in accordance with paragraph (d)(1)(iii) of this section in a general account identified by the designated representative for such source, provided that if the designated representative fails to identify such a general account in a submission to the Administrator by July 14, 2021, the Administrator may record such CSAPR NO_X Ozone Season Group 2 allowances in a general account identified or established by the Administrator with the designated representative as the authorized account representative and with the owners and operators of such source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative.

(2)(i) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section, upon any determination that would otherwise result in the initial recordation of a given number of CSAPR NO_X Ozone Season Group 1 allowances in the compliance account for a source in a State listed in § 52.38(b)(2)(iii) of this chapter (or Indian country within the borders of such a State), the Administrator will not record such CSAPR NO_X Ozone Season Group 1 allowances but instead will allocate and record in such account an amount of CSAPR NO_X Ozone Season Group 2 allowances for the control period in 2017 computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_X Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section.

(ii) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and § 97.826(d)(1), upon any determination that would otherwise result in the initial recordation of a given number of CSAPR NO_X Ozone Season Group 1 allowances in the compliance account for a source in a State listed in § 52.38(b)(2)(v) of this chapter (or Indian country within the borders of such a State), the Administrator will not record such CSAPR NO_X Ozone Season Group 1 allowances but instead will allocate and record in such account an amount of CSAPR NO_X Ozone Season Group 3 allowances for the control period in 2021 computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_X Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section and further divided by the conversion factor determined under § 97.826(d)(1)(i)(D).

(e) Notwithstanding any other provision of this subpart or any SIP revision approved under § 52.38(b)(4) or (5) of this chapter, CSAPR NO_X Ozone Season Group 2 allowances or CSAPR NO_X Ozone Season Group 3 allowances may be used to satisfy requirements to hold CSAPR NO_X Ozone Season Group 1 allowances under this subpart as follows, provided that nothing in this paragraph alters the time as of which any such allowance holding requirement must be met or limits any consequence of a failure to timely meet any such allowance holding requirement:

(1) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 1 source in a State listed in § 52.38(b)(2)(ii) of this chapter (or Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO_X Ozone Season Group 1 allowances for the control period in 2015 or 2016 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_X Ozone Season Group 2 allowances for the control period in 2017 (or any later control period for which the allowance transfer deadline defined in § 97.802 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_X Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section.

(2) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and § 97.826(d)(1), the owner or operator of a CSAPR NO_X Ozone Season Group 1 source in a State listed in § 52.38(b)(2)(iv) of this chapter (or Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO_X Ozone Season Group 1 allowances for the control period in 2015 or 2016 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_X Ozone Season Group 3 allowances for the control period in 2021 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_X Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section and further divided by the conversion factor determined under § 97.826(d)(1)(i)(D).

§ 97.531 [Amended]

■ 63. In § 97.531, amend paragraph (d)(3) introductory text by removing ''with'' in the last sentence.

Subpart CCCCC—CSAPR SO_2 Group 1 Trading Program

■ 64. Amend § 97.602 by:

■ a. Removing the definition of ''Allowable SO_2 emission rate'';

■ b. Revising the definition of ''Allowance transfer deadline'';

■ c. In the definition of ''Alternate designated representative'', removing ''or CSAPR NO_X Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program,'';

■ d. In the definition of ''Biomass'', paragraph (3) introductory text, removing the semicolon and adding in its place a colon;

■ e. Removing the definition of ''Coal-derived fuel'';

■ f. In the definition of ''Cogeneration unit'', paragraph (2)(i)(B), removing ''15 percent of total energy output.'' and adding in its place ''15 percent of total energy output; or'';

■ g. In the definition of ''Common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2021, or as of July 1 immediately after such deadline for such a control period in 2021 or thereafter, the same'', and removing ''located'' before ''in a State'';
■ h. Revising the definitions of ''Common designated representative's assurance level'' and ''Common designated representative's share'';
■ i. In the definition of ''CSAPR NO_X Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (13) through (15)'';
■ j. In the definition of ''CSAPR NO_X Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16)'', and removing ''§ 52.38(b)(6) or (9)'' and adding in its place ''§ 52.38(b)(9)'';
■ k. Adding in alphabetical order a definition for ''CSAPR NO_X Ozone Season Group 3 Trading Program'';
■ l. In the definition of ''Designated representative'', removing ''or CSAPR NO_X Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program,'';
■ m. In the definition of ''Fossil fuel'', paragraph (2), removing ''and (ii),'' and adding in its place ''and (b)(2)(ii),'';
■ n. Removing the definition of ''Heat rate''; and
■ o. Adding in alphabetical order a definition for ''Nitrogen oxides''.

The revisions and additions read as follows:

§ 97.602 Definitions.

* * * * *

Allowance transfer deadline means, for a control period before 2021, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR SO_2 Group 1 allowance transfer must be submitted for recordation in a CSAPR SO_2 Group 1 source's compliance account in order to be available for use in complying with the source's CSAPR SO_2 Group 1 emissions limitation for such control period in accordance with §§ 97.606 and 97.624.

* * * * *

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.606(c)(2)(iii), the amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR SO_2 Group 1 allowances allocated for such control period to the group of one or more CSAPR SO_2 Group 1 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR SO_2 Group 1 allowances purchased by an owner or operator of such CSAPR SO_2 Group 1 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR SO_2 Group 1 units in accordance with the CSAPR SO_2 Group 1 allowance auction provisions in a SIP revision approved by the Administrator under § 52.39(e) or (f) of this chapter, multiplied by the sum of the State SO_2 Group 1 trading budget under § 97.610(a) and the State's variability limit under § 97.610(b) for such control period, and divided by such State SO_2 Group 1 trading budget.

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of SO_2 emissions from all CSAPR SO_2 Group 1 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of SO_2 emissions during such control period from the group of one or more CSAPR SO_2 Group 1 units in such State (and such Indian country) having the common designated representative for such control period.

* * * * *

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

* * * * *

§ 97.604 [Amended]

■ 65. In § 97.604, amend paragraph (b) introductory text by removing ''or (2)(i)'' and adding in its place ''or (b)(2)(i)''.

§ 97.605 [Amended]

■ 66. In § 97.605, amend paragraph (b) by removing the paragraph heading.

§ 97.606 [Amended]

■ 67. In § 97.606, amend paragraph (c)(4)(ii) by removing ''and (2)(i)'' and adding in its place ''and (c)(2)(i)''.

§ 97.610 [Amended]

■ 68. Amend § 97.610 by:
■ a. In paragraph (a) introductory text, removing ''2015 and thereafter'' and adding in its place ''the years indicated'';
■ b. In paragraph (a)(1)(v), removing ''6,206'' and adding in its place ''6,223'';
■ c. In paragraph (a)(3)(v), removing ''1,429'' and adding in its place ''1,426'';
■ d. In paragraph (a)(4)(v), removing ''6,377'' and adding in its place ''6,381'';
■ e. In paragraph (a)(5)(v), removing ''564'' and adding in its place ''568'';
■ f. In paragraph (a)(6)(v), removing ''2,736'' and adding in its place ''2,743'';
■ g. In paragraph (a)(7)(v), removing ''4,978'' and adding in its place ''4,982'';
■ h. In paragraph (a)(8)(v), removing ''111'' and adding in its place ''110'';
■ i. In paragraph (a)(9)(v), removing ''523'' and adding in its place ''535'';
■ j. In paragraph (a)(10)(v), removing ''4,552'' and adding in its place ''4,559'';
■ k. In paragraph (a)(11)(v), removing ''2,845'' and adding in its place ''2,850'';
■ l. In paragraph (a)(12)(v), removing ''2,240'' and adding in its place ''2,242'';
■ m. In paragraph (a)(13)(v), removing ''1,177'' and adding in its place ''1,181'';
■ n. In paragraph (a)(14)(v), removing ''1,402'' and adding in its place ''1,401'';
■ o. In paragraph (a)(15)(v), removing ''5,297'' and adding in its place ''5,299''; and
■ p. In paragraph (a)(16)(v), removing ''1,867'' and adding in its place ''1,870''.

■ 69. Amend § 97.611 by:
■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), and in the newly redesignated paragraph, removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2020,'', and removing ''and (12),'' and

adding in its place ''and (12) and §§ 97.606(b)(2) and 97.630 through 97.635,'';
■ b. Adding paragraph (b)(1)(i)(B);
■ c. In paragraph (b)(1)(ii)(A), removing ''§ 97.612(a)(2) through (7) and (12) and §§ 97.606(b)(2) and 97.630 through 97.635.'' and adding in its place ''the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable.'';
■ d. Revising paragraph (b)(1)(ii)(B);
■ e. In paragraph (b)(1)(iii), removing ''such control period contains'' and adding in its place ''a control period before 2021 contains'';
■ f. In paragraphs (b)(1)(iv) introductory text and (b)(1)(iv)(A), removing ''SO_2 annual'' and adding in its place ''SO_2 Group 1'';
■ g. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2021, or in paragraph (b)(1)(ii) of this section for a control period in 2021 or thereafter,'';
■ h. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), and in the newly redesignated paragraph, removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2020,'', and removing ''and (12),'' and adding in its place ''and (12) and §§ 97.606(b)(2) and 97.630 through 97.635,'';
■ i. Adding paragraph (b)(2)(i)(B);
■ j. In paragraph (b)(2)(ii)(A), removing ''§ 97.612(b)(2) through (7) and (12) and §§ 97.606(b)(2) and 97.630 through 97.635.'' and adding in its place ''the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable.'';
■ k. Revising paragraph (b)(2)(ii)(B);
■ l. In paragraph (b)(2)(iii), removing ''such control period contains'' and adding in its place ''a control period before 2021 contains'';
■ m. In paragraphs (b)(2)(iv) introductory text and (b)(2)(iv)(A), removing ''SO_2 annual'' and adding in its place ''SO_2 Group 1'';
■ n. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2021, or in paragraph (b)(2)(ii) of this section for a control period in 2021 or thereafter,'';
■ o. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';
■ p. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';
■ q. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;
■ r. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision''; and
■ s. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph.

The additions and revisions read as follows:

§ 97.611 Timing requirements for CSAPR SO_2 Group 1 allowance allocations.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR SO_2 Group 1 allowance allocation to each CSAPR SO_2 Group 1 unit in a State, in accordance with § 97.612(a)(2) through (7), (10), and (12) and §§ 97.606(b)(2) and 97.630 through 97.635, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR SO_2 Group 1 allowance allocation to each CSAPR SO_2 Group 1 unit in Indian country within the borders of a State, in accordance with § 97.612(b)(2) through (7), (10), and (12) and §§ 97.606(b)(2) and 97.630 through 97.635, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ 70. Amend § 97.612 by:
■ a. Adding a paragraph heading to paragraph (a) introductory text;
■ b. In paragraph (a)(1)(i), removing ''§ 97.611(a)(1);'' and adding in its place ''§ 97.611(a)(1) and that have deadlines for certification of monitoring systems under § 97.630(b) not later than December 31 of the year of the control period;'';
■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for allocations for a control period before 2021, or that operate during such control period, for allocations for a control period in 2021 or thereafter; or'';
■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';
■ e. Revising paragraph (a)(3)(ii);
■ f. In paragraph (a)(3)(iv), removing ''resumes operation.'' and adding in its place ''resumes operation, for allocations for a control period before 2021, or the control period in which the unit resumes operation, for allocations for a control period in 2021 or thereafter.'';
■ g. In paragraph (a)(4)(i), removing ''SO_2 annual'' and adding in its place ''SO_2 Group 1'', and removing ''preceding control period.'' and adding in its place ''preceding control period, for allocations for a control period before 2021, or the unit's total tons of SO_2 emissions during the control period, for allocations for a control period in 2021 or thereafter.'';
■ h. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';
■ i. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ j. In paragraph (a)(9) introductory text, removing ''If, after completion'' and

adding in its place ''For a control period before 2021, if, after completion'';
■ k. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2021, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated'';
■ l. Redesignating paragraph (a)(11) as paragraph (a)(11)(i) and in the newly redesignated paragraph, removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ m. Adding paragraph (a)(11)(ii);
■ n. Revising paragraph (a)(12);
■ o. Adding a paragraph heading to paragraph (b) introductory text and removing ''located'' before ''in Indian country'';
■ p. In paragraph (b)(1)(i), removing ''§ 97.611(a)(1); or'' and adding in its place ''§ 97.611(a)(1) and that have deadlines for certification of monitoring systems under § 97.630(b) not later than December 31 of the year of the control period; or'';
■ q. Revising paragraph (b)(3)(ii);
■ r. In paragraph (b)(4)(i), removing ''SO_2 annual'' and adding in its place ''SO_2 Group 1'', and removing ''preceding control period.'' and adding in its place ''preceding control period, for allocations for a control period before 2021, or the unit's total tons of SO_2 emissions during the control period, for allocations for a control period in 2021 or thereafter.'';
■ s. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';
■ t. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ u. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2021, if, after completion'';
■ v. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2021, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated'';
■ w. Redesignating paragraph (b)(11) as paragraph (b)(11)(i) and in the newly redesignated paragraph, removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ x. Adding paragraph (b)(11)(ii); and
■ y. Revising paragraph (b)(12).

The additions and revisions read as follows:

§ 97.612 CSAPR SO_2 Group 1 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii)(A) The first control period after the control period in which the CSAPR SO_2 Group 1 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR SO_2 Group 1 unit's monitoring systems under § 97.630(b), for allocations for a control period in 2021 or thereafter;

* * * * *

(11) * * *

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.611(b)(1)(i), (ii), and (v), of the amount of CSAPR SO_2 Group 1 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR SO_2 Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2021 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2021 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR SO_2 Group 1 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR SO_2 Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii)(A) The first control period after the control period in which the CSAPR SO_2 Group 1 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR SO_2 Group 1 unit's monitoring systems under § 97.630(b), for allocations for a control period in 2021 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.611(b)(2)(i), (ii), and (v), of the amount of CSAPR SO_2 Group 1 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR SO_2 Group 1 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2021 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2021 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR SO_2 Group 1 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR SO_2 Group 1 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.620 [Amended]

■ 71. Amend § 97.620 by:

■ a. In paragraph (c)(1)(ii)(D), adding ''; and'' after the closing quotation mark; and

■ b. In paragraph (c)(3)(iii)(B), removing ''to SO_2'' and adding in its place ''to CSAPR SO_2''.

■ 72. Amend § 97.621 by:

■ a. Redesignating paragraph (f) as paragraph (f)(1) and in the newly redesignated paragraph, removing ''By July 1, 2019 and July 1 of each year thereafter,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';

■ b. Adding paragraph (f)(2);

■ c. Redesignating paragraph (g) as paragraph (g)(1) and in the newly redesignated paragraph, removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2020,'';

■ d. Adding paragraph (g)(2);

■ e. Redesignating paragraph (h) as paragraph (h)(1) and in the newly redesignated paragraph, removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2020,'';

■ f. Adding paragraph (h)(2); and

■ g. In paragraphs (i) and (j), removing ''By February 15, 2016 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2016 through 2021,''.

The additions read as follows:

§ 97.621 Recordation of CSAPR SO_2 Group 1 allowance allocations and auction results.

* * * * *

(f) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 1 source's compliance account the CSAPR SO_2 Group 1 allowances allocated to the CSAPR SO_2 Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR SO_2 Group 1 allowances auctioned to CSAPR SO_2 Group 1 units, in accordance with § 97.611(a), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) * * *

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 1 source's compliance account the CSAPR SO_2 Group 1 allowances allocated to the CSAPR SO_2 Group 1 units at the source, or in each appropriate Allowance Management System account the CSAPR SO_2 Group 1 allowances auctioned to CSAPR SO_2 Group 1 units, in accordance with § 97.612(a), or with a SIP revision approved under § 52.39(e) or (f) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 1 source's compliance account the CSAPR SO_2 Group 1 allowances allocated to the CSAPR SO_2 Group 1 units at the source in accordance with § 97.612(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 73. Amend § 97.624 by adding a paragraph heading to paragraph (c) and revising paragraph (c)(1) to read as follows:

§ 97.624 Compliance with CSAPR SO_2 Group 1 emissions limitation.

* * * * *

(c) *Selection of CSAPR SO_2 Group 1 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR SO_2 Group 1 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR SO_2 Group 1 source and the appropriate serial numbers.

* * * * *

■ 74. Amend § 97.625 by:

■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);

■ b. Removing paragraphs (b)(2) introductory text and (b)(2)(i) and (ii) and redesignating paragraphs (b)(2)(iii) introductory text and (b)(2)(iii)(A) and (B) as paragraphs (b)(2) introductory text and (b)(2)(i) and (ii), respectively;

■ c. In newly redesignated paragraph (b)(2) introductory text, removing ''the notice of data availability required in paragraph (b)(2)(ii) of this section and the calculations referenced by the relevant notice'' and adding in its place ''each notice'';

■ d. In newly redesignated paragraph (b)(2)(i), removing ''the relevant notice required under paragraph (b)(1)(ii) of this section and referenced in the notice required under paragraph (b)(2)(ii) of this section'' and adding in its place ''such notice'';

■ e. In newly redesignated paragraph (b)(2)(ii), removing ''(b)(2)(iii)(A)'' and adding in its place ''(b)(2)(i)'' each time it appears, and adding ''results of the'' before ''calculations incorporating any adjustments'';

■ f. In paragraphs (b)(3), (b)(4)(i), (b)(5), (b)(6) introductory text, and (b)(6)(i), removing ''(b)(2)(iii)(B)'' and adding in its place ''(b)(2)(ii)'' each time it appears;

■ g. Removing and reserving paragraph (b)(6)(ii); and

■ h. In paragraph (b)(6)(iii) introductory text, removing ''paragraphs (b)(6)(i) and (ii)'' and adding in its place ''paragraph (b)(6)(i)''.

The revisions read as follows:

§ 97.625 Compliance with CSAPR SO_2 Group 1 assurance provisions.

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2021 and August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total SO_2 emissions exceed the respective State assurance levels for such control period—

(A) Calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR SO_2 Group 1 sources and units in such State (and such Indian country), the common designated representative's share of the total SO_2 emissions from all CSAPR SO_2 Group 1 units at CSAPR SO_2 Group 1 sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR SO_2 Group 1 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.606(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the SO_2 emissions from each CSAPR SO_2 Group 1 source in each such State (and Indian country within the borders of such State).

* * * * *

■ 75. Amend § 97.626 by:

■ a. In paragraph (b), removing ''§ 97.628.'' and adding in its place

''§ 97.628 or paragraph (c) of this section.''; and

■ b. Adding paragraph (c).

The addition reads as follows:

§ 97.626 Banking.

* * * * *

(c) At any time after the allowance transfer deadline for the last control period for which a State SO_2 Group 1 trading budget is set forth in § 97.610(a) for a given State, the Administrator may record a transfer of any CSAPR SO_2 Group 1 allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

§ 97.632 [Amended]

■ 76. In § 97.632, amend paragraph (a) by removing ''subpart D or appendix D to part 75'' and adding in its place ''subpart D of, or appendix D to, part 75''.

§ 97.634 [Amended]

■ 77. In § 97.634, amend paragraph (d)(3) by removing ''or CSAPR NO_X Ozone Season Group 2 Trading Program,'' and adding in its place ''CSAPR NO_X Ozone Season Group 2 Trading Program, or CSAPR NO_X Ozone Season Group 3 Trading Program,''.

Subpart DDDDD—CSAPR SO_2 Group 2 Trading Program

■ 78. Amend § 97.702 by:

■ a. Removing the definition of ''Allowable SO_2 emission rate'';

■ b. Revising the definition of ''Allowance transfer deadline'';

■ c. In the definition of ''Biomass'', paragraph (3) introductory text, removing the semicolon and adding in its place a colon;

■ d. Removing the definition of ''Coal-derived fuel'';

■ e. In the definition of ''Cogeneration unit'', paragraph (2)(i)(B), removing ''15 percent of total energy output.'' and adding in its place ''15 percent of total energy output; or'';

■ f. In the definition of ''Common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2021, or as of July 1 immediately after such deadline for such a control period in 2021 or thereafter, the same'', and removing ''located'' before ''in a State'';

■ g. Revising the definitions of ''Common designated representative's assurance level'' and ''Common designated representative's share'';

■ h. In the definition of ''CSAPR NO_X Ozone Season Group 1 Trading Program'', removing ''(b)(3) through (5), and (b)(10) through (12)'' and adding in its place ''and (b)(3) through (5) and (13) through (15)'';

■ i. In the definition of ''CSAPR NO_X Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16)'', and removing ''§ 52.38(b)(6) or (9)'' and adding in its place ''§ 52.38(b)(9)'';

■ j. In the definition of ''Fossil fuel'', paragraph (2), removing ''and (ii),'' and adding in its place ''and (b)(2)(ii),'';

■ k. Removing the definition of ''Heat rate''; and

■ l. Adding in alphabetical order a definition for ''Nitrogen oxides''.

The revisions and additions read as follows:

§ 97.702 Definitions.

* * * * *

Allowance transfer deadline means, for a control period before 2021, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR SO_2 Group 2 allowance transfer must be submitted for recordation in a CSAPR SO_2 Group 2 source's compliance account in order to be available for use in complying with the source's CSAPR SO_2 Group 2 emissions limitation for such control period in accordance with §§ 97.706 and 97.724.

* * * * *

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.706(c)(2)(iii), the amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR SO_2 Group 2 allowances allocated for such control period to the group of one or more CSAPR SO_2 Group 2 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR SO_2 Group 2 allowances purchased by an owner or operator of such CSAPR SO_2 Group 2 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR SO_2 Group 2 units in accordance with the CSAPR SO_2 Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.39(h) or (i) of this chapter, multiplied by the sum of the State SO_2 Group 2 trading budget under § 97.710(a) and the State's variability limit under § 97.710(b) for such control period, and divided by such State SO_2 Group 2 trading budget.

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of SO_2 emissions from all CSAPR SO_2 Group 2 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of SO_2 emissions during such control period from the group of one or more CSAPR SO_2 Group 2 units in such State (and such Indian country) having the common designated representative for such control period.

* * * * *

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

* * * * *

§ 97.704 [Amended]

■ 79. In § 97.704, amend paragraph (b) introductory text by removing ''or (2)(i)'' and adding in its place ''or (b)(2)(i)''.

§ 97.705 [Amended]

■ 80. In § 97.705, amend paragraph (b) by removing the paragraph heading.

§ 97.706 [Amended]

■ 81. In § 97.706, amend paragraph (c)(4)(ii) by removing ''and (2)(i)'' and adding in its place ''and (c)(2)(i)''.

§ 97.710 [Amended]

■ 82. Amend § 97.710 by:

■ a. In paragraph (a) introductory text, removing ''Group 1 allowances for the control periods in 2015 and thereafter'' and adding in its place ''Group 2 allowances for the control periods in the years indicated'';

■ b. In paragraph (a)(2)(v), removing ''2,711'' and adding in its place ''2,721'';

■ c. In paragraph (a)(3)(v), removing ''798'' and adding in its place ''801'';
■ d. In paragraph (a)(4)(v), removing ''798'' and adding in its place ''800'';
■ e. In paragraph (a)(5)(v), removing ''2,658'' and adding in its place ''2,662''; and
■ f. Removing and reserving paragraphs (a)(7)(iv) through (vi) and (b)(7).

■ 83. Amend § 97.711 by:
■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), and in the newly redesignated paragraph removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2020,'', and removing ''and (12),'' and adding in its place ''and (12) and §§ 97.706(b)(2) and 97.730 through 97.735,'';
■ b. Adding paragraph (b)(1)(i)(B);
■ c. In paragraph (b)(1)(ii)(A), removing ''§ 97.712(a)(2) through (7) and (12) and §§ 97.706(b)(2) and 97.730 through 97.735.'' and adding in its place ''the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable.'';
■ d. Revising paragraph (b)(1)(ii)(B);
■ e. In paragraph (b)(1)(iii), removing ''such control period contains'' and adding in its place ''a control period before 2021 contains'';
■ f. In paragraphs (b)(1)(iv) introductory text and (b)(1)(iv)(A), removing ''SO_2 annual'' and adding in its place ''SO_2 Group 2'';
■ g. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2021, or in paragraph (b)(1)(ii) of this section for a control period in 2021 or thereafter,'';
■ h. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), and in the newly redesignated paragraph, removing ''By June 1, 2015 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2015 through 2020,'', and removing ''and (12),'' and adding in its place ''and (12) and §§ 97.706(b)(2) and 97.730 through 97.735,'';
■ i. Adding paragraph (b)(2)(i)(B);
■ j. In paragraph (b)(2)(ii)(A), removing ''§ 97.712(b)(2) through (7) and (12) and §§ 97.706(b)(2) and 97.730 through 97.735.'' and adding in its place ''the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable.'';
■ k. Revising paragraph (b)(2)(ii)(B);
■ l. In paragraph (b)(2)(iii), removing ''such control period contains'' and adding in its place ''a control period before 2021 contains'';
■ m. In paragraphs (b)(2)(iv) introductory text and (b)(2)(iv)(A), removing ''SO_2 annual'' and adding in its place ''SO_2 Group 2'';
■ n. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2021, or in paragraph (b)(2)(ii) of this section for a control period in 2021 or thereafter,'';
■ o. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';
■ p. In paragraph (c)(5)(i)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';
■ q. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;
■ r. In paragraph (c)(5)(ii)(B), adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision''; and
■ s. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph.

The additions and revisions read as follows:

§ 97.711 Timing requirements for CSAPR SO_2 Group 2 allowance allocations.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR SO_2 Group 2 allowance allocation to each CSAPR SO_2 Group 2 unit in a State, in accordance with § 97.712(a)(2) through (7), (10), and (12) and §§ 97.706(b)(2) and 97.730 through 97.735, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR SO_2 Group 2 allowance allocation to each CSAPR SO_2 Group 2 unit in Indian country within the borders of a State, in accordance with § 97.712(b)(2) through (7), (10), and (12) and §§ 97.706(b)(2) and 97.730 through 97.735, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

■ 84. Amend § 97.712 by:
■ a. Adding a paragraph heading to paragraph (a) introductory text;
■ b. In paragraph (a)(1)(i), removing ''§ 97.711(a)(1);'' and adding in its place ''§ 97.711(a)(1) and that have deadlines for certification of monitoring systems under § 97.730(b) not later than December 31 of the year of the control period;'';
■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for allocations for a control period before 2021, or that operate during such control period, for allocations for a control period in 2021 or thereafter; or'';
■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';
■ e. Revising paragraph (a)(3)(ii);
■ f. In paragraph (a)(3)(iv), removing ''resumes operation.'' and adding in its place ''resumes operation, for allocations for a control period before 2021, or the control period in which the unit resumes operation, for allocations

for a control period in 2021 or thereafter.'';
■ g. In paragraph (a)(4)(i), removing ''SO_2 annual'' and adding in its place ''SO_2 Group 2'', and removing ''preceding control period.'' and adding in its place ''preceding control period, for allocations for a control period before 2021, or the unit's total tons of SO_2 emissions during the control period, for allocations for a control period in 2021 or thereafter.'';
■ h. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';
■ i. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ j. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2021, if, after completion'';
■ k. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2021, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated'';
■ l. Redesignating paragraph (a)(11) as paragraph (a)(11)(i) and in the newly redesignated paragraph, removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ m. Adding paragraph (a)(11)(ii);
■ n. Revising paragraph (a)(12);
■ o. Adding a paragraph heading to paragraph (b) introductory text and removing ''located'' before ''in Indian country'';
■ p. In paragraph (b)(1)(i), removing ''§ 97.711(a)(1); or'' and adding in its place ''§ 97.711(a)(1) and that have deadlines for certification of monitoring systems under § 97.730(b) not later than December 31 of the year of the control period; or'';
■ q. Revising paragraph (b)(3)(ii);
■ r. In paragraph (b)(4)(i), removing ''SO_2 annual'' and adding in its place ''SO_2 Group 2'', and removing ''preceding control period.'' and adding in its place ''preceding control period, for allocations for a control period before 2021, or the unit's total tons of SO_2 emissions during the control period, for allocations for a control period in 2021 or thereafter.'';
■ s. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';
■ t. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ u. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2021, if, after completion'';
■ v. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2021, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated'';
■ w. Redesignating paragraph (b)(11) as paragraph (b)(11)(i) and in the newly redesignated paragraph, removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ x. Adding paragraph (b)(11)(ii); and
■ y. Revising paragraph (b)(12).

The additions and revisions read as follows:

§ 97.712 CSAPR SO_2 Group 2 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii)(A) The first control period after the control period in which the CSAPR SO_2 Group 2 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR SO_2 Group 2 unit's monitoring systems under § 97.730(b), for allocations for a control period in 2021 or thereafter;

* * * * *

(11) * * *

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.711(b)(1)(i), (ii), and (v), of the amount of CSAPR SO_2 Group 2 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR SO_2 Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2021 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2021 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR SO_2 Group 2 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR SO_2 Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii)(A) The first control period after the control period in which the CSAPR SO_2 Group 2 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR SO_2 Group 2 unit's monitoring systems under § 97.730(b), for allocations for a control period in 2021 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.711(b)(2)(i), (ii), and (v), of the amount of CSAPR SO_2 Group 2 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR SO_2 Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2021 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2021 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR SO_2 Group 2 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in

alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR SO_2 Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.720 [Amended]

■ 85. Amend § 97.720 by:
■ a. In paragraph (c)(1)(ii)(D), adding ''; and'' after the closing quotation mark; and
■ b. In paragraph (c)(3)(iii)(B), removing ''to SO_2'' and adding in its place ''to CSAPR SO_2''.

■ 86. Amend § 97.721 by:
■ a. Redesignating paragraph (f) as paragraph (f)(1) and in the newly redesignated paragraph, removing ''By July 1, 2019 and July 1 of each year thereafter,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';
■ b. Adding paragraph (f)(2);
■ c. Redesignating paragraph (g) as paragraph (g)(1) and in the newly redesignated paragraph, removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2020,'';
■ d. Adding paragraph (g)(2);
■ e. Redesignating paragraph (h) as paragraph (h)(1) and in the newly redesignated paragraph, removing ''By August 1, 2015 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2015 through 2020,'';
■ f. Adding paragraph (h)(2); and
■ g. In paragraphs (i) and (j), removing ''By February 15, 2016 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2016 through 2021,''.

The additions read as follows:

§ 97.721 Recordation of CSAPR SO_2 Group 2 allowance allocations and auction results.

* * * * *

(f) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 2 source's compliance account the CSAPR SO_2 Group 2 allowances allocated to the CSAPR SO_2 Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR SO_2 Group 2 allowances auctioned to CSAPR SO_2 Group 2 units, in accordance with § 97.711(a), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) * * *

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 2 source's compliance account the CSAPR SO_2 Group 2 allowances allocated to the CSAPR SO_2 Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR SO_2 Group 2 allowances auctioned to CSAPR SO_2 Group 2 units, in accordance with § 97.712(a), or with a SIP revision approved under § 52.39(h) or (i) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR SO_2 Group 2 source's compliance account the CSAPR SO_2 Group 2 allowances allocated to the CSAPR SO_2 Group 2 units at the source in accordance with § 97.712(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 87. Amend § 97.724 by adding a paragraph heading to paragraph (c) and revising paragraph (c)(1) to read as follows:

§ 97.724 Compliance with CSAPR SO_2 Group 2 emissions limitation.

* * * * *

(c) *Selection of CSAPR SO_2 Group 2 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR SO_2 Group 2 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR SO_2 Group 2 source and the appropriate serial numbers.

* * * * *

■ 88. Amend § 97.725 by:
■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);
■ b. Removing paragraphs (b)(2) introductory text and (b)(2)(i) and (ii) and redesignating paragraphs (b)(2)(iii) introductory text and (b)(2)(iii)(A) and (B) as paragraphs (b)(2) introductory text and (b)(2)(i) and (ii), respectively;
■ c. In newly redesignated paragraph (b)(2) introductory text, removing ''the notice of data availability required in paragraph (b)(2)(ii) of this section and the calculations referenced by the relevant notice'' and adding in its place ''each notice'';
■ d. In newly redesignated paragraph (b)(2)(i), removing ''the relevant notice required under paragraph (b)(1)(ii) of this section and referenced in the notice required under paragraph (b)(2)(ii) of this section'' and adding in its place ''such notice'';
■ e. In newly redesignated paragraph (b)(2)(ii), removing ''(b)(2)(iii)(A)'' and adding in its place ''(b)(2)(i)'' each time it appears, and adding ''results of the'' before ''calculations incorporating any adjustments'';
■ f. In paragraphs (b)(3), (b)(4)(i), (b)(5), (b)(6) introductory text, and (b)(6)(i), removing ''(b)(2)(iii)(B)'' and adding in its place ''(b)(2)(ii)'' each time it appears;
■ g. Removing and reserving paragraph (b)(6)(ii); and
■ h. In paragraph (b)(6)(iii) introductory text, removing ''paragraphs (b)(6)(i) and (ii)'' and adding in its place ''paragraph (b)(6)(i)''.

The revisions read as follows:

§ 97.725 Compliance with CSAPR SO_2 Group 2 assurance provisions.

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2021 and August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total SO_2 emissions exceed the respective State assurance levels for such control period—

(A) Calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR SO_2 Group 2 sources and units in such State (and such Indian country), the common designated representative's share of the total SO_2 emissions from all CSAPR SO_2 Group 2 units at CSAPR SO_2 Group 2 sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR SO_2 Group 2 allowances that the owners and

operators of such group of sources and units must hold in accordance with the calculation formula in § 97.706(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the SO_2 emissions from each CSAPR SO_2 Group 2 source in each such State (and Indian country within the borders of such State).

* * * * *

■ 89. Amend § 97.726 by:

■ a. In paragraph (b), removing ''§ 97.728.'' and adding in its place ''§ 97.728 or paragraph (c) of this section.''; and

■ b. Adding paragraph (c).

The addition reads as follows:

§ 97.726 Banking.

* * * * *

(c) At any time after the allowance transfer deadline for the last control period for which a State SO_2 Group 2 trading budget is set forth in § 97.710(a) for a given State, the Administrator may record a transfer of any CSAPR SO_2 Group 2 allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

§ 97.731 [Amended]

■ 90. In § 97.731, amend paragraph (d)(3) introductory text by removing in the last sentence the word ''with''.

§ 97.732 [Amended]

■ 91. In § 97.732, amend paragraph (a) by removing ''subpart D or appendix D to part 75'' and adding in its place ''subpart D of, or appendix D to, part 75''.

Subpart EEEEE—CSAPR NO_X Ozone Season Group 2 Trading Program

■ 92. Amend § 97.802 by:

■ a. In the definition of ''Allocate or allocation'', introductory text, removing ''§ 97.526(c),'' and adding in its place ''§ 97.526(d),'', and removing ''§ 52.38(b)(6), (7), (8), or (9)'' and adding in its place ''§ 52.38(b)(7), (8), or (9)'';

■ b. Removing the definition of ''Allowable NO_X emission rate'';

■ c. Revising the definition of ''Allowance transfer deadline'';

■ d. In the definitions of ''Auction'' and ''Base CSAPR NO_X Ozone Season Group 2 unit'', removing ''§ 52.38(b)(6), (8), or (9)'' and adding in its place ''§ 52.38(b)(8) or (9)'';

■ e. In the definition of ''Biomass'', paragraph (3) introductory text, removing the semicolon and adding in its place a colon;

■ f. Removing the definition of ''Coal-derived fuel'';

■ g. In the definition of ''Cogeneration unit'', paragraph (2)(i)(B), removing ''15 percent of total energy output.'' and adding in its place ''15 percent of total energy output; or'';

■ h. In the definition of ''Common designated representative'', removing ''such control period, the same'' and adding in its place ''such a control period before 2021, or as of July 1 immediately after such deadline for such a control period in 2021 or thereafter, the same'', and removing ''located'' before ''in a State'';

■ i. Revising the definitions of ''Common designated representative's assurance level'' and ''Common designated representative's share'';

■ j. Removing the definitions of ''CSAPR NO_X Ozone Season Group 1 allowance'' and ''CSAPR NO_X Ozone Season Group 1 Trading Program'';

■ k. In the definition of ''CSAPR NO_X Ozone Season Group 2 allowance'', removing ''§ 97.526(c),'' and adding in its place ''§ 97.526(d),'', and removing ''§ 52.38(b)(6), (7), (8), or (9)'' and adding in its place ''§ 52.38(b)(7), (8), or (9)'';

■ l. In the definition of ''CSAPR NO_X Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16)'', and removing ''§ 52.38(b)(6) or (9)'' and adding in its place ''§ 52.38(b)(9)'';

■ m. Adding in alphabetical order definitions for ''CSAPR NO_X Ozone Season Group 3 allowance'' and ''CSAPR NO_X Ozone Season Group 3 Trading Program'';

■ n. Removing the definition of ''Heat rate'';

■ o. Adding in alphabetical order a definition for ''Nitrogen oxides''; and

■ p. In the definition of ''State'', removing ''(2)(i) and (iii), (6) through (11), and (13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16)''.

The revisions and additions read as follows:

§ 97.802 Definitions.

* * * * *

Allowance transfer deadline means, for a control period before 2021, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR NO_X Ozone Season Group 2 allowance transfer must be submitted for recordation in a CSAPR NO_X Ozone Season Group 2 source's compliance account in order to be available for use in complying with the source's CSAPR NO_X Ozone Season Group 2 emissions limitation for such control period in accordance with §§ 97.806 and 97.824.

* * * * *

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.806(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_X Ozone Season Group 2 allowances allocated for such control period to the group of one or more base CSAPR NO_X Ozone Season Group 2 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR NO_X Ozone Season Group 2 allowances purchased by an owner or operator of such base CSAPR NO_X Ozone Season Group 2 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such base CSAPR NO_X Ozone Season Group 2 units in accordance with the CSAPR NO_X Ozone Season Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(8) or (9) of this chapter, multiplied by the sum of the State NO_X Ozone Season Group 2 trading budget under § 97.810(a) and the State's variability limit under § 97.810(b) for such control period, and divided by the greater of such State NO_X Ozone Season Group 2 trading budget or the sum of all amounts of CSAPR NO_X Ozone Season Group 2 allowances for such control period allocated to or purchased in the State's auction for all

such base CSAPR NO_X Ozone Season Group 2 units;

(2) Provided that the allocations of CSAPR NO_X Ozone Season Group 2 allowances for any control period taken into account for purposes of this definition shall exclude any CSAPR NO_X Ozone Season Group 2 allowances allocated for such control period under § 97.526(d).

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of NO_X emissions from all base CSAPR NO_X Ozone Season Group 2 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of NO_X emissions during such control period from the group of one or more base CSAPR NO_X Ozone Season Group 2 units in such State (and such Indian country) having the common designated representative for such control period.

* * * * *

CSAPR NO_X Ozone Season Group 3 allowance means a limited authorization issued and allocated or auctioned by the Administrator under subpart GGGGG of this part, § 97.526(d), or § 97.826(d), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Ozone Season Group 3 Trading Program.

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

* * * * *

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

* * * * *

§ 97.804 [Amended]

■ 93. In § 97.804, amend paragraph (c) introductory text by removing ''§ 52.38(b)(6), (8), or (9)'' and adding in its place ''§ 52.38(b)(8) or (9)''.

§ 97.805 [Amended]

■ 94. In § 97.805, amend paragraph (b) by removing the paragraph heading.

§ 97.810 [Amended]

■ 95. Amend § 97.810 by:
■ a. In paragraph (a) introductory text, removing ''2017 and thereafter'' and adding in its place ''the years indicated'';
■ b. In paragraphs (a)(1)(i) through (iii), adding ''for 2017 and thereafter'' before ''is'';
■ c. Removing and reserving paragraph (a)(3);
■ d. In paragraphs (a)(4)(i) and (ii) and (a)(5)(i) and (ii), adding ''for 2017 through 2020'' before ''is'';
■ e. In paragraphs (a)(6)(i) through (iii) and (a)(7)(i) through (iii), adding ''for 2017 and thereafter'' before ''is'';
■ f. In paragraphs (a)(8)(i) and (ii), (a)(9)(i) through (iii), (a)(10)(i) and (ii), and (a)(11)(i) through (iii), adding ''for 2017 through 2020'' before ''is'';
■ g. In paragraphs (a)(12)(i) through (iii) and (a)(13)(i) and (ii), adding ''for 2017 and thereafter'' before ''is'';
■ h. In paragraphs (a)(14)(i) and (ii), (a)(15)(i) through (iii), and (a)(16)(i) and (ii), adding ''for 2017 through 2020'' before ''is'';
■ i. In paragraphs (a)(17)(i) through (iii), adding ''for 2017 and thereafter'' before ''is'';
■ j. In paragraphs (a)(18)(i) and (ii), adding ''for 2017 through 2020'' before ''is'';
■ k. In paragraphs (a)(19)(i) and (ii) and (a)(20)(i) through (iii), adding ''for 2017 and thereafter'' before ''is'';
■ l. In paragraphs (a)(21)(i) and (ii) and (a)(22)(i) and (ii), adding ''for 2017 through 2020'' before ''is'';
■ m. In paragraphs (a)(23)(i) through (iii), adding ''for 2017 and thereafter'' before ''is'';
■ n. In paragraph (b) introductory text, removing ''2017 and thereafter'' and adding in its place ''the years indicated'';
■ o. In paragraph (b)(1), adding ''for 2017 and thereafter'' before ''is'';
■ p. Removing and reserving paragraph (b)(3);
■ q. In paragraphs (b)(4) and (5), adding ''for 2017 through 2020'' before ''is'';
■ r. In paragraphs (b)(6) and (7), adding ''for 2017 and thereafter'' before ''is'';
■ s. In paragraphs (b)(8) through (11), adding ''for 2017 through 2020'' before ''is'';
■ t. In paragraphs (b)(12) and (13), adding ''for 2017 and thereafter'' before ''is'';
■ u. In paragraphs (b)(14) through (16), adding ''for 2017 through 2020'' before ''is'';
■ v. In paragraph (b)(17), adding ''for 2017 and thereafter'' before ''is'';
■ w. In paragraph (b)(18), adding ''for 2017 through 2020'' before ''is'';
■ x. In paragraphs (b)(19) and (20), adding ''for 2017 and thereafter'' before ''is'';
■ y. In paragraphs (b)(21) and (22), adding ''for 2017 through 2020'' before ''is''; and
■ z. In paragraph (b)(23), adding ''for 2017 and thereafter'' before ''is''.

■ 96. Amend § 97.811 by:
■ a. Redesignating paragraph (b)(1)(i) as paragraph (b)(1)(i)(A), and in the newly redesignated paragraph, removing ''By June 1, 2017 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2017 through 2020,'', and removing '' and (12),'' and adding in its place ''and (12) and §§ 97.806(b)(2) and 97.830 through 97.835,'';
■ b. Adding paragraph (b)(1)(i)(B);
■ c. In paragraph (b)(1)(ii)(A), removing ''§ 97.812(a)(2) through (7) and (12) and §§ 97.806(b)(2) and 97.830 through 97.835.'' and adding in its place ''the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable.'';
■ d. Revising paragraph (b)(1)(ii)(B);
■ e. In paragraph (b)(1)(iii), removing ''such control period contains'' and adding in its place ''a control period before 2021 contains'';
■ f. In paragraph (b)(1)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2021, or in paragraph (b)(1)(ii) of this section for a control period in 2021 or thereafter,'';
■ g. Redesignating paragraph (b)(2)(i) as paragraph (b)(2)(i)(A), and in the newly redesignated paragraph, removing ''By June 1, 2017 and June 1 of each year thereafter,'' and adding in its place ''By June 1 of each year from 2017 through 2020,'', and removing ''and (12),'' and adding in its place ''and (12) and §§ 97.806(b)(2) and 97.830 through 97.835,'';
■ h. Adding paragraph (b)(2)(i)(B);
■ i. In paragraph (b)(2)(ii)(A), removing ''§ 97.812(b)(2) through (7) and (12) and §§ 97.806(b)(2) and 97.830 through 97.835.'' and adding in its place ''the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable.'';
■ j. Revising paragraph (b)(2)(ii)(B);
■ k. In paragraph (b)(2)(iii), removing ''such control period contains'' and adding in its place ''a control period before 2021 contains'';

■ l. In paragraph (b)(2)(v), removing ''of this section,'' and adding in its place ''of this section for a control period before 2021, or in paragraph (b)(2)(ii) of this section for a control period in 2021 or thereafter,'';
■ m. In paragraph (c)(1) introductory text, removing ''§ 52.38(b)(6), (7), (8), or (9)'' and adding in its place ''§ 52.38(b)(7), (8), or (9)'', and removing ''§ 52.38(b)(6), (8), or (9)'' and adding in its place ''§ 52.38(b)(8) or (9)'';
■ n. In paragraph (c)(1)(i)(A) and (B), removing ''§ 52.38(b)(6), (7), (8), or (9)'' and adding in its place ''§ 52.38(b)(7), (8), or (9)'';
■ o. In paragraph (c)(1)(ii), removing ''§ 52.38(b)(6), (8), or (9)'' and adding in its place ''§ 52.38(b)(8) or (9)'';
■ p. In paragraph (c)(5)(i)(A), adding ''(or a subsequent control period)'' before ''for the State'';
■ q. In paragraph (c)(5)(i)(B), removing ''§ 52.38(b)(6), (8), or (9)'' and adding in its place ''§ 52.38(b)(8) or (9)'', and adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';
■ r. In paragraph (c)(5)(ii)(A), adding ''(or a subsequent control period)'' before the semicolon at the end of the paragraph;
■ s. In paragraph (c)(5)(ii)(B), removing ''§ 52.38(b)(6), (8), or (9)'' and adding in its place ''§ 52.38(b)(8) or (9)'', and adding ''(or a subsequent control period)'' before ''in accordance with such SIP revision'';
■ t. In paragraph (c)(5)(iii), adding ''(or a subsequent control period)'' before the period at the end of the paragraph; and
■ u. Adding paragraph (d).

The additions and revisions read as follows:

§ 97.811 Timing requirements for CSAPR NO_X Ozone Season Group 2 allowance allocations.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 2 allowance allocation to each CSAPR NO_X Ozone Season Group 2 unit in a State, in accordance with § 97.812(a)(2) through (7), (10), and (12) and §§ 97.806(b)(2) and 97.830 through 97.835, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(1)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(i) * * *

(B) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 2 allowance allocation to each CSAPR NO_X Ozone Season Group 2 unit in Indian country within the borders of a State, in accordance with § 97.812(b)(2) through (7), (10), and (12) and §§ 97.806(b)(2) and 97.830 through 97.835, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) * * *

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(i)(A) or (B) of this section, as applicable. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(A) of this section, or by May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i)(B) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

* * * * *

(d) *Recall of CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods after 2020.* (1) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b) of this chapter, the provisions of this paragraph and paragraphs (d)(2) through (7) of this section shall apply with regard to each CSAPR NO_X Ozone Season Group 2 allowance that was allocated for a control period after 2020 to any unit (including a permanently retired unit qualifying for an exemption under § 97.805) in a State listed in § 52.38(b)(2)(iv) of this chapter (or Indian country within the borders of such a State) and that was initially recorded in the compliance account for the source that includes the unit, whether such CSAPR NO_X Ozone Season Group 2 allowance was allocated pursuant to this subpart or pursuant to a SIP revision approved under § 52.38(b) of this chapter and whether such CSAPR NO_X Ozone Season Group 2 allowance remains in such compliance account or has been transferred to another Allowance Management System account.

(2)(i) For each CSAPR NO_X Ozone Season Group 2 allowance described in paragraph (d)(1) of this section that was allocated for a given control period and initially recorded in a given source's compliance account, one CSAPR NO_X Ozone Season Group 2 allowance that was allocated for the same or an earlier control period and initially recorded in the same or any other Allowance Management System account must be surrendered in accordance with the procedures in paragraphs (d)(3) and (4) of this section.

(ii)(A) The surrender requirement under paragraph (d)(2)(i) of this section corresponding to each CSAPR NO_X Ozone Season Group 2 allowance described in paragraph (d)(1) of this section initially recorded in a given source's compliance account shall apply to such source's current owners and operators, except as provided in paragraph (d)(2)(ii)(B) of this section.

(B) If the owners and operators of a given source as of a given date assumed ownership and operational control of the source through a transaction that did not also provide rights to direct the use or transfer of a given CSAPR NO_X Ozone Season Group 2 allowance described in paragraph (d)(1) of this section with regard to such source (whether recordation of such CSAPR NO_X Ozone Season Group 2 allowance in the source's compliance account occurred before such transaction or was anticipated to occur after such transaction), then the surrender requirement under paragraph (d)(2)(i) of this section corresponding to such CSAPR NO_X Ozone Season Group 2 allowance shall apply to the most recent former owners and operators of the source before the occurrence of such a transaction.

(C) The Administrator will not adjudicate any private legal dispute among the owners and operators of a

source or among the former owners and operators of a source, including any disputes relating to the requirements to surrender CSAPR NO_X Ozone Season Group 2 allowances for the source under paragraph (d)(2)(i) of this section.

(3)(i) As soon as practicable on or after June 29, 2021, the Administrator will send a notification to the designated representative for each source described in paragraph (d)(1) of this section identifying the amounts of CSAPR NO_X Ozone Season Group 2 allowances allocated for each control period after 2020 and recorded in the source's compliance account and the corresponding surrender requirements for the source under paragraph (d)(2)(i) of this section.

(ii) As soon as practicable on or after July 14, 2021, the Administrator will deduct from the compliance account for each source described in paragraph (d)(1) of this section CSAPR NO_X Ozone Season Group 2 allowances eligible to satisfy the surrender requirements for the source under paragraph (d)(2)(i) of this section until all such surrender requirements for the source are satisfied or until no more CSAPR NO_X Ozone Season Group 2 allowances eligible to satisfy such surrender requirements remain in such compliance account.

(iii) As soon as practicable after completion of the deductions under paragraph (d)(3)(ii) of this section, the Administrator will identify for each source described in paragraph (d)(1) of this section the amounts, if any, of CSAPR NO_X Ozone Season Group 2 allowances allocated for each control period after 2020 and recorded in the source's compliance account for which the corresponding surrender requirements under paragraph (d)(2)(i) of this section have not been satisfied and will send a notification concerning such identified amounts to the designated representative for the source.

(iv) With regard to each source for which unsatisfied surrender requirements under paragraph (d)(2)(i) of this section remain after the deductions under paragraph (d)(3)(ii) of this section:

(A) Except as provided in paragraph (d)(3)(iv)(B) of this section, not later than September 15, 2021, the owners and operators of the source shall hold sufficient CSAPR NO_X Ozone Season Group 2 allowances eligible to satisfy such unsatisfied surrender requirements under paragraph (d)(2)(i) of this section in the source's compliance account.

(B) With regard to any portion of such unsatisfied surrender requirements that apply to former owners and operators of the source pursuant to paragraph (d)(2)(ii)(B) of this section, not later than September 15, 2021, such former owners and operators shall hold sufficient CSAPR NO_X Ozone Season Group 2 allowances eligible to satisfy such portion of the unsatisfied surrender requirements under paragraph (d)(2)(i) of this section either in the source's compliance account or in another Allowance Management System account identified to the Administrator on or before such date in a submission by the authorized account representative for such account.

(C) As soon as practicable on or after September 15, 2021, the Administrator will deduct from the Allowance Management System account identified in accordance with paragraph (d)(3)(iv)(A) or (B) of this section CSAPR NO_X Ozone Season Group 2 allowances eligible to satisfy the surrender requirements for the source under paragraph (d)(2)(i) of this section until all such surrender requirements for the source are satisfied or until no more CSAPR NO_X Ozone Season Group 2 allowances eligible to satisfy such surrender requirements remain in such account.

(v) When making deductions under paragraph (d)(3)(ii) or (iv) of this section to address the surrender requirements under paragraph (d)(2)(i) of this section for a given source:

(A) The Administrator will make deductions to address any surrender requirements with regard to first the 2021 control period, then the 2022 control period, then the 2023 control period, and finally the 2024 control period.

(B) When making deductions to address the surrender requirements with regard to a given control period, the Administrator will first deduct CSAPR NO_X Ozone Season Group 2 allowances allocated for such given control period and will then deduct CSAPR NO_X Ozone Season Group 2 allowances allocated for each successively earlier control period in sequence.

(C) When deducting CSAPR NO_X Ozone Season Group 2 allowances allocated for a given control period from a given Allowance Management System account, the Administrator will first deduct CSAPR NO_X Ozone Season Group 2 allowances initially recorded in the account under § 97.821 (if the account is a compliance account) in the order of recordation and will then deduct CSAPR NO_X Ozone Season Group 2 allowances recorded in the account under § 97.526(d) or § 97.823 in the order of recordation.

(4)(i) To the extent the surrender requirements under paragraph (d)(2)(i) of this section corresponding to any CSAPR NO_X Ozone Season Group 2 allowances allocated for a control period after 2020 and initially recorded in a given source's compliance account have not been fully satisfied through the deductions under paragraph (d)(3) of this section, as soon as practicable on or after November 15, 2021, the Administrator will deduct such initially recorded CSAPR NO_X Ozone Season Group 2 allowances from any Allowance Management System accounts in which such CSAPR NO_X Ozone Season Group 2 allowances are held, making such deductions in any order determined by the Administrator, until all such surrender requirements for such source have been satisfied or until all such CSAPR NO_X Ozone Season Group 2 allowances have been deducted, except as provided in paragraph (d)(4)(ii) of this section.

(ii) If no person with an ownership interest in a given CSAPR NO_X Ozone Season Group 2 allowance as of January 31, 2021 was an owner or operator of the source in whose compliance account such CSAPR NO_X Ozone Season Group 2 allowance was initially recorded, was a direct or indirect parent or subsidiary of an owner or operator of such source, or was directly or indirectly under common ownership with an owner or operator of such source, the Administrator will not deduct such CSAPR NO_X Ozone Season Group 2 allowance under paragraph (d)(4)(i) of this section. For purposes of this paragraph, each owner or operator of a source shall be deemed to be a person with an ownership interest in any CSAPR NO_X Ozone Season Group 2 allowance held in that source's compliance account. The limitation established by this paragraph on the deductibility of certain CSAPR NO_X Ozone Season Group 2 allowances under paragraph (d)(4)(i) of this section shall not be construed as a waiver of the surrender requirements under paragraph (d)(2)(i) of this section corresponding to such CSAPR NO_X Ozone Season Group 2 allowances.

(iii) Not less than 45 days before the planned date for any deductions under paragraph (d)(4)(i) of this section, the Administrator will send a notification to the authorized account representative for the Allowance Management System account from which such deductions will be made identifying the CSAPR NO_X Ozone Season Group 2 allowances to be deducted and the data upon which the Administrator has relied and specifying a process for submission of any objections to such data. Any objections must be submitted to the Administrator not later than 15 days before the planned date for such

deductions as indicated in such notification.

(5) To the extent the surrender requirements under paragraph (d)(2)(i) of this section corresponding to any CSAPR NO_X Ozone Season Group 2 allowances allocated for a control period after 2020 and initially recorded in a given source's compliance account have not been fully satisfied through the deductions under paragraphs (d)(3) and (4) of this section:

(i) The persons identified in accordance with paragraph (d)(2)(ii) of this section with regard to such source and each such CSAPR NO_X Ozone Season Group 2 allowance shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(ii) Each such CSAPR NO_X Ozone Season Group 2 allowance, and each day in such control period, shall constitute a separate violation of this subpart and the Clean Air Act.

(6) The Administrator will record in the appropriate Allowance Management System accounts all deductions of CSAPR NO_X Ozone Season Group 2 allowances under paragraphs (d)(3) and (4) of this section.

(7)(i) Each submission, objection, or other written communication from a designated representative, authorized account representative, or other person to the Administrator under paragraph (d)(2), (3), or (4) of this section shall be sent electronically to the email address *CSAPR@epa.gov*. Each such communication from a designated representative must contain the certification statement set forth in § 97.814(a), and each such communication from the authorized account representative for a general account must contain the certification statement set forth in § 97.820(c)(2)(ii).

(ii) Each notification from the Administrator to a designated representative or authorized account representative under paragraph (d)(3) or (4) of this section will be sent electronically to the email address most recently received by the Administrator for such representative. In any such notification, the Administrator may provide information by means of a reference to a publicly accessible website where the information is available.

■ 98. Amend § 97.812 by:
■ a. Adding a paragraph heading to paragraph (a) introductory text;
■ b. In paragraph (a)(1)(i), removing ''§ 97.811(a)(1);'' and adding in its place ''§ 97.811(a)(1) and that have deadlines for certification of monitoring systems under § 97.830(b) not later than September 30 of the year of the control period;'';
■ c. In paragraph (a)(1)(iii), removing ''control period; or'' and adding in its place ''control period, for allocations for a control period before 2021, or that operate during such control period, for allocations for a control period in 2021 or thereafter; or'';
■ d. In paragraph (a)(3) introductory text, removing ''later'' and adding in its place ''latest'';
■ e. Revising paragraph (a)(3)(ii);
■ f. In paragraph (a)(3)(iv), removing ''resumes operation.'' and adding in its place ''resumes operation, for allocations for a control period before 2021, or the control period in which the unit resumes operation, for allocations for a control period in 2021 or thereafter.'';
■ g. In paragraph (a)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for allocations for a control period before 2021, or the unit's total tons of NO_X emissions during the control period, for allocations for a control period in 2021 or thereafter.'';
■ h. In paragraph (a)(5), adding ''allocation amounts of'' after ''sum of the'';
■ i. In paragraph (a)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ j. In paragraph (a)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2021, if, after completion'';
■ k. In paragraph (a)(10), removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2021, or under paragraphs (a)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated'';
■ l. Redesignating paragraph (a)(11) as paragraph (a)(11)(i) and in the newly redesignated paragraph, removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ m. Adding paragraph (a)(11)(ii);
■ n. Revising paragraph (a)(12);
■ o. Adding a paragraph heading to paragraph (b) introductory text and removing ''located'' before ''in Indian country'';
■ p. In paragraph (b)(1)(i), removing ''§ 97.811(a)(1); or'' and adding in its place ''§ 97.811(a)(1) and that have deadlines for certification of monitoring systems under § 97.830(b) not later than September 30 of the year of the control period; or'';
■ q. Revising paragraph (b)(3)(ii);
■ r. In paragraph (b)(4)(i), removing ''preceding control period.'' and adding in its place ''preceding control period, for allocations for a control period before 2021, or the unit's total tons of NO_X emissions during the control period, for allocations for a control period in 2021 or thereafter.'';
■ s. In paragraph (b)(5), adding ''allocation amounts of'' after ''sum of the'';
■ t. In paragraph (b)(8), removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ u. In paragraph (b)(9) introductory text, removing ''If, after completion'' and adding in its place ''For a control period before 2021, if, after completion'';
■ v. In paragraph (b)(10) introductory text, removing ''for such control period, any unallocated'' and adding in its place ''for a control period before 2021, or under paragraphs (b)(2) through (7) and (12) of this section for a control period in 2021 or thereafter, any unallocated'';
■ w. In paragraph (b)(10)(ii), removing ''§ 52.38(b)(6), (8), or (9)'' and adding in its place ''§ 52.38(b)(8) or (9)'';
■ x. Redesignating paragraph (b)(11) as paragraph (b)(11)(i) and in the newly redesignated paragraph, removing ''The Administrator'' and adding in its place ''For a control period before 2021, the Administrator'';
■ y. Adding paragraph (b)(11)(ii); and
■ z. Revising paragraph (b)(12).

The additions and revisions read as follows:

§ 97.812 CSAPR NO_X Ozone Season Group 2 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* * * *

* * * * *

(3) * * *

(ii)(A) The first control period after the control period in which the CSAPR NO_X Ozone Season Group 2 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR NO_X Ozone Season Group 2 unit's monitoring systems under § 97.830(b), for allocations for a control period in 2021 or thereafter;

* * * * *

(11) * * *

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(1)(i), (ii), and (v), of the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone

Season Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period before 2021 under paragraph (a)(7) of this section, paragraphs (a)(6) and (a)(9)(iv) of this section, or paragraphs (a)(6), (a)(9)(iii), and (a)(10) of this section, or for a control period in 2021 or thereafter under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section, would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 2 units in descending order based on such units' allocation amounts under paragraph (a)(7), (a)(9)(iv), or (a)(10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Ozone Season Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* * * *

* * * * *

(3) * * *

(ii)(A) The first control period after the control period in which the CSAPR NO_X Ozone Season Group 2 unit commences commercial operation, for allocations for a control period before 2021; or

(B) The control period containing the deadline for certification of the CSAPR NO_X Ozone Season Group 2 unit's monitoring systems under § 97.830(b), for allocations for a control period in 2021 or thereafter.

* * * * *

(11) * * *

(ii) For a control period in 2021 or thereafter, the Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.811(b)(2)(i), (ii), and (v), of the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 2 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period before 2021 under paragraph (b)(7) of this section or paragraphs (b)(6) and (b)(9)(iv) of this section, or for a control period in 2021 or thereafter under paragraph (b)(7) of this section, would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 2 units in descending order based on such units' allocation amounts under paragraph (b)(7) or (b)(9)(iv) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Ozone Season Group 2 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.820 [Amended]

■ 98. Amend § 97.820 by:

■ a. In paragraph (c)(1)(ii)(D), adding ''; and'' after the closing quotation mark; and

■ b. In paragraph (c)(3)(iii)(B), removing ''to NO_X'' and adding in its place ''to CSAPR NO_X''.

■ 99. Amend § 97.821 by:

■ a. In paragraphs (c), (d), and (e), removing ''§ 52.38(b)(6), (8), or (9)'' and adding in its place ''§ 52.38(b)(8) or (9)'';

■ b. In paragraph (f), removing ''By July 1, 2021'' and adding in its place ''By July 1, 2022'', removing ''§ 52.38(b)(6), (8), or (9)'' and adding in its place ''§ 52.38(b)(8) or (9)'', and removing ''in the fourth year'' and adding in its place ''in the third year'';

■ c. Redesignating paragraph (g) as paragraph (g)(1), and in the newly redesignated paragraph, removing ''By August 1, 2017 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2017 through 2020,'' and removing ''§ 52.38(b)(6), (8), or (9)'' and adding in its place ''§ 52.38(b)(8) or (9)'';

■ d. Adding paragraph (g)(2);

■ e. Redesignating paragraph (h) as paragraph (h)(1) and in the newly redesignated paragraph, removing ''By August 1, 2017 and August 1 of each year thereafter,'' and adding in its place ''By August 1 of each year from 2017 through 2020,'';

■ f. Adding paragraph (h)(2);

■ g. In paragraphs (i) and (j), removing ''By February 15, 2018 and February 15 of each year thereafter,'' and adding in its place ''By February 15 of each year from 2018 through 2021,''; and

■ h. In paragraph (k), removing ''§ 52.38(b)(6), (8), or (9)'' and adding in its place ''§ 52.38(b)(8) or (9)''.

The additions read as follows:

§ 97.821 Recordation of CSAPR NO_X Ozone Season Group 2 allowance allocations and auction results.

* * * * *

(g) * * *

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 2 allowances auctioned to CSAPR NO_X Ozone Season Group 2 units, in accordance with § 97.812(a), or with a SIP revision approved under § 52.38(b)(8) or (9) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) * * *

(2) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 2 source's compliance account the CSAPR NO_X Ozone Season Group 2 allowances allocated to the CSAPR NO_X Ozone Season Group 2 units at the source in accordance with § 97.812(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

* * * * *

■ 100. Amend § 97.824 by:

■ a. Adding a paragraph heading to paragraph (c);

■ b. Revising paragraph (c)(1); and

■ c. In paragraph (c)(2)(ii), removing ''§ 97.526(c),'' and adding in its place ''§ 97.526(d),''.

The addition and revision read as follows:

§ 97.824 Compliance with CSAPR NO_X Ozone Season Group 2 emissions limitation.

* * * * *

(c) *Selection of CSAPR NO_X Ozone Season Group 2 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR NO_X Ozone Season Group 2 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR NO_X Ozone Season Group 2 source and the appropriate serial numbers.

* * * * *

■ 101. Amend § 97.825 by:

■ a. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);

■ b. Removing paragraphs (b)(2) introductory text and (b)(2)(i) and (ii) and redesignating paragraphs (b)(2)(iii) introductory text and (b)(2)(iii)(A) and (B) as paragraphs (b)(2) introductory text and (b)(2)(i) and (ii), respectively;

■ c. In newly redesignated paragraph (b)(2) introductory text, removing ''the notice of data availability required in paragraph (b)(2)(ii) of this section and the calculations referenced by the relevant notice'' and adding in its place ''each notice'';

■ d. In newly redesignated paragraph (b)(2)(i), removing ''the relevant notice required under paragraph (b)(1)(ii) of this section and referenced in the notice required under paragraph (b)(2)(ii) of this section'' and adding in its place ''such notice'';

■ e. In newly redesignated paragraph (b)(2)(ii), removing ''(b)(2)(iii)(A)'' and adding in its place ''(b)(2)(i)'' each time it appears, and adding ''results of the'' before ''calculations incorporating any adjustments'';

■ f. In paragraphs (b)(3), (b)(4)(i), (b)(5), (b)(6) introductory text, and (b)(6)(i), removing ''(b)(2)(iii)(B)'' and adding in its place ''(b)(2)(ii)'' each time it appears;

■ g. Removing and reserving paragraph (b)(6)(ii); and

■ h. In paragraph (b)(6)(iii) introductory text, removing ''paragraphs (b)(6)(i) and (ii)'' and adding in its place ''paragraph (b)(6)(i)''.

The revisions read as follows:

§ 97.825 Compliance with CSAPR NO_X Ozone Season Group 2 assurance provisions.

* * * * *

(b) * * *

(1) By June 1 of each year from 2018 through 2021 and August 1 of each year thereafter, the Administrator will:

* * * * *

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total NO_X emissions exceed the respective State assurance levels for such control period—

(A) Calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more base CSAPR NO_X Ozone Season Group 2 sources and units in such State (and such Indian country), the common designated representative's share of the total NO_X emissions from all base CSAPR NO_X Ozone Season Group 2 units at base CSAPR NO_X Ozone Season Group 2 sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR NO_X Ozone Season Group 2 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.806(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the NO_X emissions from each base CSAPR NO_X Ozone Season Group 2 source in each such State (and Indian country within the borders of such State).

* * * * *

■ 102. Amend § 97.826 by:

■ a. Revising the section heading;

■ b. In paragraph (b), removing ''§ 97.811(c),'' and adding in its place ''§ 97.811(c) or (d),'', and removing ''§ 97.828.'' and adding in its place ''§ 97.828 or paragraph (c) or (d) of this section.''; and

■ c. Adding paragraphs (c), (d), and (e).

The revision and additions read as follows:

§ 97.826 Banking and conversion.

* * * * *

(c) At any time after the allowance transfer deadline for the last control period for which a State NO_X Ozone Season Group 2 trading budget is set forth in § 97.810(a) for a given State and after completion of the procedures under paragraphs (d)(1) and (2) of this section, the Administrator may record a transfer of any CSAPR NO_X Ozone Season Group 2 allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

(d) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b)(8) or (9) of this chapter:

(1) By August 13, 2021, the Administrator will temporarily suspend acceptance of CSAPR NO_X Ozone Season Group 2 allowance transfers submitted under § 97.822 and, before resuming acceptance of such transfers, will take the following actions:

(i) The Administrator will determine each of the following values:

(A) The total amount of CSAPR NO_X Ozone Season Group 2 allowances allocated for the control periods in 2017 through 2020 attributable to the States listed in § 52.38(b)(2)(iv) of this chapter (and Indian country within the borders of such States), computed as the sum of the State NO_X Ozone Season Group 2 trading budgets under § 97.810(a) for such States for all such control periods plus the product of 1.5 multiplied by the sum of the variability limits under § 97.810(b) for such States for the control period in 2017.

(B) The total tons of NO_X emissions reported in accordance with §§ 97.806(b) and 97.830 through 97.835 for all CSAPR NO_X Ozone Season Group 2 units at CSAPR NO_X Ozone Season Group 2 sources in the States listed in § 52.38(b)(2)(iv) of this chapter (and Indian country within the borders of such States) for the control periods in 2017 through 2020.

(C) The full-season CSAPR NO_X Ozone Season Group 3 allowance bank target, computed as the sum for all States listed in § 52.38(b)(2)(v) of this chapter of the variability limits under § 97.1010(b) for such States for the control period in 2022.

(D) A conversion factor, computed as the quotient, rounded down to the nearest whole number, of the remainder of the total amount of CSAPR NO_X Ozone Season Group 2 allowances determined under paragraph (d)(1)(i)(A) of this section minus the total tons of NO_X emissions determined under paragraph (d)(1)(i)(B) of this section divided by the full-season CSAPR NO_X

Ozone Season Group 3 allowance bank target determined under paragraph (d)(1)(i)(C) of this section.

(E) The adjusted CSAPR NO_X Ozone Season Group 3 allowance bank target, computed as the product, rounded to the nearest allowance, of the full-season CSAPR NO_X Ozone Season Group 3 allowance bank target determined under paragraph (d)(1)(i)(C) of this section multiplied by a fraction whose numerator is the number of days from June 29, 2021 through September 30, 2021, inclusive, and whose denominator is 153.

(ii) The Administrator will allocate CSAPR NO_X Ozone Season Group 3 allowances for the control period in 2021 to sources in States listed in § 52.38(b)(2)(v) of this chapter (and Indian country within the borders of such States) as follows:

(A) The Administrator will determine for each such source the source's maximum share, computed as the quotient, rounded down to the nearest whole number, of the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 held in the source's compliance account divided by the conversion factor determined under paragraph (d)(1)(i)(D) of this section.

(B) The Administrator will determine a source allocation scaling factor, computed as the lesser of 1.0000 or the quotient, expressed to four decimal places, of the adjusted CSAPR NO_X Ozone Season Group 3 allowance bank target determined under paragraph (d)(1)(i)(E) of this section divided by the sum for all such sources of the maximum shares under paragraph (d)(1)(ii)(A) of this section.

(C) The Administrator will allocate to each such source an amount of CSAPR NO_X Ozone Season Group 3 allowances computed as the product, rounded to the nearest allowance, of such source's maximum share under paragraph (d)(1)(ii)(A) of this section multiplied by the source allocation scaling factor determined under paragraph (d)(1)(ii)(B) of this section.

(iii) If the sum for all sources of the allocations under paragraph (d)(1)(ii)(C) of this section is less than the adjusted CSAPR NO_X Ozone Season Group 3 allowance bank target determined under paragraph (d)(1)(i)(E) of this section, the Administrator will allocate CSAPR NO_X Ozone Season Group 3 allowances for the control period in 2021 to general accounts as follows:

(A) The Administrator will determine for each general account the account's maximum share, computed as the quotient, rounded down to the nearest whole number, of the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 held in the account divided by the conversion factor determined under paragraph (d)(1)(i)(D) of this section.

(B) The Administrator will determine a general account allocation scaling factor, computed as the lesser of 1.0000 or the quotient, expressed to four decimal places, of the remainder of the adjusted CSAPR NO_X Ozone Season Group 3 allowance bank target determined under paragraph (d)(1)(i)(E) of this section minus the sum for all sources of the allocations under paragraph (d)(1)(ii)(C) of this section divided by the sum for all general accounts of the maximum shares under paragraph (d)(1)(iii)(A) of this section.

(C) The Administrator will allocate to each general account an amount of CSAPR NO_X Ozone Season Group 3 allowances computed as the product, rounded to the nearest allowance, of such account's maximum share under paragraph (d)(1)(iii)(A) of this section multiplied by the general account allocation scaling factor determined under paragraph (d)(1)(iii)(B) of this section.

(iv) For the compliance account of each source, and for each general account, to which an amount of CSAPR NO_X Ozone Season Group 3 allowances greater than zero is allocated under paragraph (d)(1)(ii)(C) or (d)(1)(iii)(C) of this section, respectively:

(A) The Administrator will determine the amount of CSAPR NO_X Ozone Season Group 2 allowances required to be deducted from the account, computed as the product of the amount of CSAPR NO_X Ozone Season Group 3 allowances allocated to the source or general account under paragraph (d)(1)(ii)(C) or (d)(1)(iii)(C) of this section multiplied by the conversion factor determined under paragraph (d)(1)(i)(D) of this section. The Administrator will deduct CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 from the account on a first-in, first-out basis in the order set forth in § 97.824(c)(2)(i) and (ii).

(B) The Administrator will record in the account the allocations of CSAPR NO_X Ozone Season Group 3 allowances under paragraph (d)(1)(ii)(C) or (d)(1)(iii)(C) of this section and the deductions of CSAPR NO_X Ozone Season Group 2 allowances under paragraph (d)(1)(iv)(A) of this section.

(2)(i) During the period beginning February 1, 2022 and ending February 28, 2022, the designated representative for a source in a State listed in § 52.38(b)(2)(v) of this chapter (or Indian country within the borders of such a State) may request that the Administrator allocate additional CSAPR NO_X Ozone Season Group 3 allowances for the control period in 2021 to the source pursuant to paragraph (d)(2)(ii) of this section. Any such request shall be submitted to the Administrator electronically at the email address *CSAPR@epa.gov.*

(ii) For each source covered by a request under paragraph (d)(2)(i) of this section, as soon as practicable on or after March 1, 2022, the Administrator will deduct from the source's compliance account, on a first-in, first-out basis in the order set forth in § 97.824(c)(2)(i) and (ii), the maximum number of sets of 18 CSAPR NO_X Ozone Season Group 2 allowances allocated for control periods before 2021 available in the compliance account. The Administrator will then allocate to the source one CSAPR NO_X Ozone Season Group 3 allowance for the control period in 2021 for each set of 18 CSAPR NO_X Ozone Season Group 2 allowances deducted. The Administrator will record the allocations and deductions under this paragraph in the source's compliance account.

(3) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section, upon any determination that would otherwise result in the initial recordation of a given number of CSAPR NO_X Ozone Season Group 2 allowances in the compliance account for a source in a State listed in § 52.38(b)(2)(v) of this chapter (or Indian country within the borders of such a State), the Administrator will not record such CSAPR NO_X Ozone Season Group 2 allowances but instead will allocate and record in such account an amount of CSAPR NO_X Ozone Season Group 3 allowances for the control period in 2021 computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_X Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (d)(1)(i)(D) of this section.

(e) Notwithstanding any other provision of this subpart or any SIP revision approved under § 52.38(b)(8) or (9) of this chapter, CSAPR NO_X Ozone Season Group 3 allowances may be used to satisfy requirements to hold CSAPR NO_X Ozone Season Group 2 allowances under this subpart as follows, provided that nothing in this paragraph alters the time as of which any such allowance holding requirement must be met or limits any consequence of a failure to timely meet any such allowance holding requirement:

(1) Except as provided in paragraph (e)(2) of this section, after the

Administrator has carried out the procedures set forth in paragraph (d)(1) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 2 source in a State listed in § 52.38(b)(2)(iv) of this chapter (or Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO_X Ozone Season Group 2 allowances for the control period in a year from 2017 through 2020 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_X Ozone Season Group 3 allowances for the control period in 2021 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_X Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (d)(1)(i)(D) of this section.

(2) CSAPR NO_X Ozone Season Group 3 allowances may not be used to satisfy requirements to surrender CSAPR NO_X Ozone Season Group 2 allowances under § 97.811(d).

§ 97.831 [Amended]

■ 103. In § 97.831, amend paragraph (d)(3) introductory text by removing in the last sentence the word ''with''.

Subpart FFFFF—Texas SO_2 Trading Program

■ 104. Amend § 97.902 by:
■ a. Revising the definition of ''Allowance transfer deadline'';
■ b. In the definition of ''Common designated representative'', removing ''April'' and adding in its place ''July'';
■ c. In the definition of ''CSAPR NO_X Ozone Season Group 2 Trading Program'', removing ''(b)(2)(i) and (iii), (b)(6) through (11), and (b)(13)'' and adding in its place ''(b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16)'', and removing ''§ 52.38(b)(6) or (9)'' and adding in its place ''§ 52.38(b)(9)''; and
■ d. Adding in alphabetical order a definition for ''Nitrogen oxides''.

The revision and additions read as follows:

§ 97.902 Definitions.

* * * * *

Allowance transfer deadline means, for a control period before 2021, midnight of March 1 immediately after such control period or, for a control period in 2021 or thereafter, midnight of June 1 immediately after such control period (or if such March 1 or June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a Texas SO_2 Trading Program allowance transfer must be submitted for recordation in a Texas SO_2 Trading Program source's compliance account in order to be available for use in complying with the source's Texas SO_2 Trading Program emissions limitation for such control period in accordance with §§ 97.906 and 97.924.

* * * * *

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

* * * * *

§ 97.905 [Amended]

■ 105. In § 97.905, amend paragraph (b) by removing the paragraph heading.

■ 106. Amend § 97.911 by:
■ a. Adding a paragraph heading to paragraph (a); and
■ b. In Table 1 to paragraph (a)(1), revising the column headings and the table entries for ''Big Brown Unit 1'', ''Big Brown Unit 2'', ''Coleto Creek Unit 1'', Graham Unit 2'', Martin Lake Unit 1'', Martin Lake Unit 2'', Martin Lake Unit 3'', Monticello Unit 1'', ''Monticello Unit 2'', ''Monticello Unit 3'', ''Sandow Unit 4'', and ''Stryker Unit ST2''.

The addition reads as follows:

§ 97.911 Texas SO_2 Trading Program allowance allocations.

(a) *Allocations from the Texas SO_2 Trading Program budget.* * * *

* * * * *

TABLE 1 TO PARAGRAPH (a)(1)—TEXAS SO_2 TRADING PROGRAM ALLOCATIONS

Texas SO_2 trading program units	ORIS code	Texas SO_2 trading program allocation (tons)	Affiliated ownership group
Big Brown Unit 1	3497	8,473	Vistra.
Big Brown Unit 2	3497	8,559	Vistra.
Coleto Creek Unit 1	6178	9,057	Vistra.
* * * * *	*	*	*
Graham Unit 2	3490	226	Vistra.
* * * * *	*	*	*
Martin Lake Unit 1	6146	12,024	Vistra.
Martin Lake Unit 2	6146	11,580	Vistra.
Martin Lake Unit 3	6146	12,236	Vistra.
Monticello Unit 1	6147	8,598	Vistra.
Monticello Unit 2	6147	8,795	Vistra.
Monticello Unit 3	6147	12,216	Vistra.
* * * * *	*	*	*
Sandow Unit 4	6648	8,370	Vistra.
* * * * *	*	*	*
Stryker Unit ST2	3504	145	Vistra.
* * * * *	*	*	*

* * * * *

§ 97.912 [Amended]

■ 107. Amend § 97.912 by:
■ a. In paragraph (a)(3)(i), removing ''paragraph (b)'' and adding in its place ''paragraph (d)''; and
■ b. In paragraph (b)(2), removing ''February 15, 2022 and each subsequent February 15,'' and adding in its place ''May 1, 2022 and May 1 of each year thereafter,''.

§ 97.920 [Amended]

■ 108. Amend § 97.920 by:
■ a. In paragraph (c)(1)(ii)(D), adding ''; and'' after the closing quotation mark; and
■ b. In paragraph (d), removing ''paragraphs (a), (b), and (c)'' and adding in its place ''paragraph (a), (b), or (c)''.

■ 109. Amend § 97.921 by:
■ a. Redesignating paragraph (b) as paragraph (b)(1) and in the newly redesignated paragraph, removing ''By July 1, 2019,'' and adding in its place ''By July 1, 2019 and July 1, 2020,'';
■ b. Adding paragraph (b)(2); and
■ c. In paragraph (c), removing ''By February 15, 2020 and February 15'' and adding in its place ''By February 15 of 2020 and 2021 and May 1'', and removing ''control period in the year'' and adding in its place ''control period in the year before the year''.

The addition reads as follows:

§ 97.921 Recordation of Texas SO_2 Trading Program allowance allocations.

* * * * *

(b) * * *

(2) By July 1, 2022 and July 1 of each year thereafter, the Administrator will record in each Texas SO_2 Trading Program source's compliance account the Texas SO_2 Trading Program allowances allocated to the Texas SO_2 Trading Program units at the source in accordance with § 97.911(a) for the control period in the third year after the year of the applicable recordation deadline under this paragraph, unless provided otherwise in the Administrator's approval of a SIP revision replacing the provisions of this subpart.

* * * * *

■ 110. Amend § 97.924 by adding a paragraph heading to paragraph (c) and revising paragraph (c)(1) to read as follows:

§ 97.924 Compliance with Texas SO_2 Trading Program emissions limitations.

* * * * *

(c) *Selection of Texas SO_2 Trading Program allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific Texas SO_2 Trading Program allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the Texas SO_2 Trading Program source and the appropriate serial numbers.

* * * * *

■ 111. Amend § 97.925 by:
■ a. In paragraph (b)(1) introductory text, removing ''June'' and adding in its place ''August'' each time it appears;
■ b. In paragraph (b)(1)(i), removing ''§ 97.906(c)(2)(iii).'' and adding in its place ''§ 97.906(c)(2)(iii); and'';
■ c. Adding paragraph (b)(1)(ii);
■ d. Removing paragraphs (b)(2) introductory text and (b)(2)(i) and (ii) and redesignating paragraphs (b)(2)(iii) introductory text and (b)(2)(iii)(A) and (B) as paragraphs (b)(2) introductory text and (b)(2)(i) and (ii), respectively;
■ e. In newly redesignated paragraph (b)(2) introductory text, removing ''the notice'' and adding in its place ''each notice'', and removing ''(b)(2)(ii)'' and adding in its place ''(b)(1)(ii)'';
■ f. In newly redesignated paragraph (b)(2)(i), removing ''the notice required under paragraph (b)(2)(ii) of this section'' and adding in its place ''such notice'';
■ g. In newly redesignated paragraph (b)(2)(ii), removing ''(b)(2)(iii)(A)'' and adding in its place ''(b)(2)(i)'' each time it appears, and adding ''results of the'' before ''calculations incorporating any adjustments'';
■ h. In paragraph (b)(3), removing ''the notice'' and adding in its place ''each notice'', and removing ''(b)(2)(iii)(B)'' and adding in its place ''(b)(2)(ii)''; and
■ i. In paragraphs (b)(4)(i), (b)(5), (b)(6) introductory text, and (b)(6)(i), removing ''(b)(2)(iii)(B)'' and adding in its place ''(b)(2)(ii)'' each time it appears.

The addition reads as follows:

§ 97.925 Compliance with Texas SO_2 Trading Program assurance provisions.

* * * * *

(b) * * *

(1) * * *

(ii) If the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total SO_2 emissions exceed the State assurance level for such control period—

(A) Calculate, for such control period and each common designated representative for such control period for a group of one or more Texas SO_2 Trading Program sources and units, the common designated representative's share of the total SO_2 emissions from all Texas SO_2 Trading Program units at Texas SO_2 Trading Program sources, the common designated representative's assurance level, and the amount (if any) of Texas SO_2 Trading Program allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.906(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the SO_2 emissions from each Texas SO_2 Trading Program source.

* * * * *

§ 97.932 [Amended]

■ 112. In § 97.932, amend paragraph (a) by removing ''subpart D or appendix D to part 75'' and adding in its place ''subpart D of, or appendix D to, part 75''.

■ 113. Add subpart GGGGG, consisting of §§ 97.1001 through 97.1035, to read as follows:

Subpart GGGGG—CSAPR NO_X Ozone Season Group 3 Trading Program

Sec.

Subpart GGGGG—CSAPR NO_X Ozone Season Group 3 Trading Program

§ 97.1001 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Cross-State Air Pollution Rule (CSAPR) NO_X Ozone Season Group 3 Trading Program, under section 110 of the Clean Air Act and § 52.38 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

§ 97.1002 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows, provided that any term that includes the acronym ''CSAPR'' shall be considered synonymous with a term that is used in a SIP revision approved by the Administrator under § 52.38 or § 52.39 of this chapter and that is substantively identical except for the inclusion of the acronym ''TR'' in place of the acronym ''CSAPR'':

Acid Rain Program means a multi-state SO_2 and NO_X air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

Allocate or *allocation* means, with regard to CSAPR NO_X Ozone Season Group 3 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart, § 97.526(d), § 97.826(d), and any SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, of the amount of such CSAPR NO_X Ozone Season Group 3 allowances to be initially credited, at no cost to the recipient, to:

(1) A CSAPR NO_X Ozone Season Group 3 unit;

(2) A new unit set-aside;

(3) An Indian country new unit set-aside; or

(4) An entity not listed in paragraphs (1) through (3) of this definition;

(5) Provided that, if the Administrator, State, or permitting authority initially credits, to a CSAPR NO_X Ozone Season Group 3 unit qualifying for an initial credit, a credit in the amount of zero CSAPR NO_X Ozone Season Group 3 allowances, the CSAPR NO_X Ozone Season Group 3 unit will be treated as being allocated an amount (*i.e.,* zero) of CSAPR NO_X Ozone Season Group 3 allowances.

Allowance Management System means the system by which the Administrator records allocations, auctions, transfers, and deductions of CSAPR NO_X Ozone Season Group 3 allowances under the CSAPR NO_X Ozone Season Group 3 Trading Program. Such allowances are allocated, auctioned, recorded, held, transferred, or deducted only as whole allowances.

Allowance Management System account means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, auction, holding, transfer, or deduction of CSAPR NO_X Ozone Season Group 3 allowances.

Allowance transfer deadline means, for a control period in a given year, midnight of June 1 immediately after such control period (or if such June 1 is not a business day, midnight of the first business day thereafter) and is the deadline by which a CSAPR NO_X Ozone Season Group 3 allowance transfer must be submitted for recordation in a CSAPR NO_X Ozone Season Group 3 source's compliance account in order to be available for use in complying with the source's CSAPR NO_X Ozone Season Group 3 emissions limitation for such control period in accordance with §§ 97.1006 and 97.1024.

Alternate designated representative means, for a CSAPR NO_X Ozone Season Group 3 source and each CSAPR NO_X Ozone Season Group 3 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the CSAPR NO_X Ozone Season Group 3 Trading Program. If the CSAPR NO_X Ozone Season Group 3 source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, or CSAPR SO_2 Group 1 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

Assurance account means an Allowance Management System account, established by the Administrator under § 97.1025(b)(3) for certain owners and operators of a group of one or more base CSAPR NO_X Ozone Season Group 3 sources and units in a given State (and Indian country within the borders of such State), in which are held CSAPR NO_X Ozone Season Group 3 allowances available for use for a control period in a given year in complying with the CSAPR NO_X Ozone Season Group 3 assurance provisions in accordance with §§ 97.1006 and 97.1025.

Auction means, with regard to CSAPR NO_X Ozone Season Group 3 allowances, the sale to any person by a State or permitting authority, in accordance with a SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(11) or (12) of this chapter, of such CSAPR NO_X Ozone Season Group 3 allowances to be initially recorded in an Allowance Management System account.

Authorized account representative means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of CSAPR NO_X Ozone Season Group 3 allowances held in the general account and, for a CSAPR NO_X Ozone Season Group 3 source's compliance account, the designated representative of the source.

Automated data acquisition and handling system or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the

monitoring system to produce a continuous record of the measured parameters in the measurement units required by this subpart.

Base CSAPR NO_X Ozone Season Group 3 source means a source that includes one or more base CSAPR NO_X Ozone Season Group 3 units.

Base CSAPR NO_X Ozone Season Group 3 unit means a CSAPR NO_X Ozone Season Group 3 unit, provided that any unit that would not be a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004(a) and (b) is not a base CSAPR NO_X Ozone Season Group 3 unit notwithstanding the provisions of any SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter.

Biomass means—

(1) Any organic material grown for the purpose of being converted to energy;

(2) Any organic byproduct of agriculture that can be converted into energy; or

(3) Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other material that is nonmerchantable for other purposes, and that is:

(i) A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

(ii) A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle unit means a unit in which the energy input to the unit is first used to produce useful thermal energy, where at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

Business day means a day that does not fall on a weekend or a federal holiday.

Certifying official means a natural person who is:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, federal, or other public agency, a principal executive officer or ranking elected official.

Clean Air Act means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means ''coal'' as defined in § 72.2 of this chapter.

Cogeneration system means an integrated group, at a source, of equipment (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a topping-cycle unit or a bottoming-cycle unit:

(1) Operating as part of a cogeneration system; and

(2) Producing on an annual average basis—

(i) For a topping-cycle unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output; or

(ii) For a bottoming-cycle unit, useful power not less than 45 percent of total energy input;

(3) Provided that the requirements in paragraph (2) of this definition shall not apply to a calendar year referenced in paragraph (2) of this definition during which the unit did not operate at all;

(4) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel, except biomass if the unit is a boiler; and

(5) Provided that, if, throughout its operation during the 12-month period or a calendar year referenced in paragraph (2) of this definition, a unit is operated as part of a cogeneration system and the cogeneration system meets on a system-wide basis the requirement in paragraph (2)(i)(B) or (2)(ii) of this definition, the unit shall be deemed to meet such requirement during that 12-month period or calendar year.

Combustion turbine means an enclosed device comprising:

(1) If the device is simple cycle, a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the device is combined cycle, the equipment described in paragraph (1) of this definition and any associated duct burner, heat recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 97.1005.

(i) For a unit that is a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that subsequently undergoes a physical change or is moved to a new location or source, such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition and that is subsequently replaced by a unit at the same or a different source, such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.1005, for a unit that is not a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004 on the later of January 1, 2005 or the date the unit commences commercial operation as defined in the introductory text of paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004.

(i) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that subsequently undergoes a physical change or is moved to a different location or source, such date shall remain the date of commencement of commercial operation of the unit,

which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in the introductory text of paragraph (2) of this definition and that is subsequently replaced by a unit at the same or a different source, such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Common designated representative means, with regard to a control period in a given year, a designated representative where, as of July 1 immediately after the allowance transfer deadline for such control period, the same natural person is authorized under §§ 97.1013(a) and 97.1015(a) as the designated representative for a group of one or more base CSAPR NO_X Ozone Season Group 3 sources and units in a State (and Indian country within the borders of such State).

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.1006(c)(2)(iii):

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_X Ozone Season Group 3 allowances allocated for such control period to the group of one or more base CSAPR NO_X Ozone Season Group 3 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR NO_X Ozone Season Group 3 allowances purchased by an owner or operator of such base CSAPR NO_X Ozone Season Group 3 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such base CSAPR NO_X Ozone Season Group 3 units in accordance with the CSAPR NO_X Ozone Season Group 3 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter, multiplied by the sum of the State NO_X Ozone Season Group 3 trading budget under § 97.1010(a) and the State's variability limit under § 97.1010(b) for such control period, and divided by the greater of such State NO_X Ozone Season Group 3 trading budget or the sum of all amounts of CSAPR NO_X Ozone Season Group 3 allowances for such control period allocated to or purchased in the State's auction for all such base CSAPR NO_X Ozone Season Group 3 units;

(2) Provided that—

(i) The allocations of CSAPR NO_X Ozone Season Group 3 allowances for any control period taken into account for purposes of this definition shall exclude any CSAPR NO_X Ozone Season Group 3 allowances allocated for such control period under § 97.526(d) or § 97.826(d); and

(ii) For purposes of this definition for the control period in 2021 only, for each State the amount of the State NO_X Ozone Season Group 3 trading budget shall be deemed to be increased by the supplemental amount of CSAPR NO_X Ozone Season Group 3 allowances determined for the State under § 97.1010(d) and the amount of the State's variability limit shall be deemed to be increased by the product (rounded to the nearest allowance) of 0.21 multiplied by the supplemental amount of CSAPR NO_X Ozone Season Group 3 allowances determined for the State under § 97.1010(d).

Common designated representative's share means, with regard to a specific common designated representative for a control period in a given year and a total amount of NO_X emissions from all base CSAPR NO_X Ozone Season Group 3 units in a State (and Indian country within the borders of such State) during such control period, the total tonnage of NO_X emissions during such control period from the group of one or more base CSAPR NO_X Ozone Season Group 3 units in such State (and such Indian country) having the common designated representative for such control period.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means an Allowance Management System account, established by the Administrator for a CSAPR NO_X Ozone Season Group 3 source under this subpart, in which any CSAPR NO_X Ozone Season Group 3 allowance allocations to the CSAPR NO_X Ozone Season Group 3 units at the source are recorded and in which are held any CSAPR NO_X Ozone Season Group 3 allowances available for use for a control period in a given year in complying with the source's CSAPR NO_X Ozone Season Group 3 emissions limitation in accordance with §§ 97.1006 and 97.1024.

Continuous emission monitoring system or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of NO_X emissions, stack gas volumetric flow rate, stack gas moisture content, and O_2 or CO_2 concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.1030 through 97.1035. The following systems are the principal types of continuous emission monitoring systems:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A NO_X concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

(3) A NO_X emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(5) A CO_2 monitoring system, consisting of a CO_2 pollutant concentration monitor (or an O_2 monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(6) An O_2 monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

Control period means the period starting May 1 of a calendar year, except as provided in § 97.1006(c)(3), and ending on September 30 of the same year, inclusive.

CSAPR NO_X Annual Trading Program means a multi-state NO_X air pollution control and emission reduction program

established in accordance with subpart AAAAA of this part and § 52.38(a) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(a)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(a)(5) of this chapter), as a means of mitigating interstate transport of fine particulates and NO_X.

CSAPR NO_X Ozone Season Group 2 allowance means a limited authorization issued and allocated or auctioned by the Administrator under subpart EEEEE of this part or § 97.526(d), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(7), (8), or (9) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Ozone Season Group 2 Trading Program.

CSAPR NO_X Ozone Season Group 2 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(iii) and (iv), and (b)(7) through (9), (13), (14), and (16) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(9) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR NO_X Ozone Season Group 3 allowance means a limited authorization issued and allocated or auctioned by the Administrator under this subpart, § 97.526(d), or § 97.826(d), or by a State or permitting authority under a SIP revision approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, to emit one ton of NO_X during a control period of the specified calendar year for which the authorization is allocated or auctioned or of any calendar year thereafter under the CSAPR NO_X Ozone Season Group 3 Trading Program.

CSAPR NO_X Ozone Season Group 3 allowance deduction or *deduct CSAPR NO_X Ozone Season Group 3 allowances* means the permanent withdrawal of CSAPR NO_X Ozone Season Group 3 allowances by the Administrator from a compliance account (*e.g.,* in order to account for compliance with the CSAPR NO_X Ozone Season Group 3 emissions limitation) or from an assurance account (*e.g.,* in order to account for compliance with the assurance provisions under §§ 97.1006 and 97.1025).

CSAPR NO_X Ozone Season Group 3 allowances held or *hold CSAPR NO_X Ozone Season Group 3 allowances* means the CSAPR NO_X Ozone Season Group 3 allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, CSAPR NO_X Ozone Season Group 3 allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, CSAPR NO_X Ozone Season Group 3 allowance transfer in accordance with this subpart.

CSAPR NO_X Ozone Season Group 3 emissions limitation means, for a CSAPR NO_X Ozone Season Group 3 source, the tonnage of NO_X emissions authorized in a control period in a given year by the CSAPR NO_X Ozone Season Group 3 allowances available for deduction for the source under § 97.1024(a) for such control period.

CSAPR NO_X Ozone Season Group 3 source means a source that includes one or more CSAPR NO_X Ozone Season Group 3 units.

CSAPR NO_X Ozone Season Group 3 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with this subpart and § 52.38(b)(1), (b)(2)(v), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

CSAPR NO_X Ozone Season Group 3 unit means a unit that is subject to the CSAPR NO_X Ozone Season Group 3 Trading Program.

CSAPR SO_2 Group 1 Trading Program means a multi-state SO_2 air pollution control and emission reduction program established in accordance with subpart CCCCC of this part and § 52.39(a), (b), (d) through (f), and (j) through (l) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(d) or (e) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(f) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

Designated representative means, for a CSAPR NO_X Ozone Season Group 3 source and each CSAPR NO_X Ozone Season Group 3 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the CSAPR NO_X Ozone Season Group 3 Trading Program. If the CSAPR NO_X Ozone Season Group 3 source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, or CSAPR SO_2 Group 1 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

Excess emissions means any ton of emissions from the CSAPR NO_X Ozone Season Group 3 units at a CSAPR NO_X Ozone Season Group 3 source during a control period in a given year that exceeds the CSAPR NO_X Ozone Season Group 3 emissions limitation for the source for such control period.

Fossil fuel means—

(1) Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material; or

(2) For purposes of applying the limitation on ''average annual fuel consumption of fossil fuel'' in § 97.1004(b)(2)(i)(B) and (b)(2)(ii), natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in 2005 or any calendar year thereafter.

General account means an Allowance Management System account, established under this subpart, that is not a compliance account or an assurance account.

Generator means a device that produces electricity.

Heat input means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel

feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

Heat input rate means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Indian country means ''Indian country'' as defined in 18 U.S.C. 1151.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input rate means, for a unit, the maximum amount of fuel per hour (in Btu/hr) that the unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe, rounded to the nearest tenth) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

Natural gas means ''natural gas'' as defined in § 72.2 of this chapter.

Newly affected CSAPR NO_X Ozone Season Group 3 unit means a unit that was not a CSAPR NO_X Ozone Season Group 3 unit when it began operating but that thereafter becomes a CSAPR NO_X Ozone Season Group 3 unit.

Nitrogen oxides means all oxides of nitrogen except nitrous oxide (N_2O), reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

Operate or *operation* means, with regard to a unit, to combust fuel.

Operator means, for a CSAPR NO_X Ozone Season Group 3 source or a CSAPR NO_X Ozone Season Group 3 unit at a source respectively, any person who operates, controls, or supervises a CSAPR NO_X Ozone Season Group 3 unit at the source or the CSAPR NO_X Ozone Season Group 3 unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

Owner means, for a CSAPR NO_X Ozone Season Group 3 source or a CSAPR NO_X Ozone Season Group 3 unit at a source respectively, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a CSAPR NO_X Ozone Season Group 3 unit at the source or the CSAPR NO_X Ozone Season Group 3 unit;

(2) Any holder of a leasehold interest in a CSAPR NO_X Ozone Season Group 3 unit at the source or the CSAPR NO_X Ozone Season Group 3 unit, provided that, unless expressly provided for in a leasehold agreement, ''owner'' shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CSAPR NO_X Ozone Season Group 3 unit; and

(3) Any purchaser of power from a CSAPR NO_X Ozone Season Group 3 unit at the source or the CSAPR NO_X Ozone Season Group 3 unit under a life-of-the-unit, firm power contractual arrangement.

Permanently retired means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

Permitting authority means ''permitting authority'' as defined in §§ 70.2 and 71.2 of this chapter.

Potential electrical output capacity means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or *receipt of* means, when referring to the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the Administrator in the regular course of business.

Recordation, record, or *recorded* means, with regard to CSAPR NO_X Ozone Season Group 3 allowances, the moving of CSAPR NO_X Ozone Season Group 3 allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, auction, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Replacement, replace, or *replaced* means, with regard to a unit, the demolishing of a unit, or the permanent retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

Sequential use of energy means:

(1) The use of reject heat from electricity production in a useful thermal energy application or process; or

(2) The use of reject heat from a useful thermal energy application or process in electricity production.

Serial number means, for a CSAPR NO_X Ozone Season Group 3 allowance, the unique identification number assigned to each CSAPR NO_X Ozone Season Group 3 allowance by the Administrator.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a ''solid waste incineration unit'' as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. This definition

does not change or otherwise affect the definition of ''major source'', ''stationary source'', or ''source'' as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

State means one of the States that is subject to the CSAPR NO_X Ozone Season Group 3 Trading Program pursuant to § 52.38(b)(1), (b)(2)(v), and (b)(10) through (14) and (17) of this chapter.

Submit or *serve* means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery;

(4) Provided that compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Topping-cycle unit means a unit in which the energy input to the unit is first used to produce useful power, including electricity, where at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, for a unit, total energy of all forms supplied to the unit, excluding energy produced by the unit. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

Where:

LHV = lower heating value of the form of energy in Btu/lb,
HHV = higher heating value of the form of energy in Btu/lb,
W = weight % of moisture in the form of energy, and
H = weight % of hydrogen in the form of energy.

Total energy output means, for a unit, the sum of useful power and useful thermal energy produced by the unit.

Unit means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

Unit operating day means, with regard to a unit, a calendar day in which the unit combusts any fuel.

Unit operating hour or *hour of unit operation* means, with regard to a unit, an hour in which the unit combusts any fuel.

Useful power means, with regard to a unit, electricity or mechanical energy that the unit makes available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (*e.g.,* space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.,* in an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 97.1003 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart are defined as follows:

Btu—British thermal unit
CO_2—carbon dioxide
CSAPR—Cross-State Air Pollution Rule
H_2O—water
hr—hour
kWh—kilowatt-hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt-hour
NO_X—nitrogen oxides
O_2—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SIP—State implementation plan
SO_2—sulfur dioxide
TR—Transport Rule
yr—year

§ 97.1004 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State (and Indian country within the borders of such State) shall be CSAPR NO_X Ozone Season Group 3 units, and any source that includes one or more such units shall be a CSAPR NO_X Ozone Season Group 3 source, subject to the requirements of this subpart: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CSAPR NO_X Ozone Season Group 3 unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CSAPR NO_X Ozone Season Group 3 unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) Any unit in a State (and Indian country within the borders of such State) that otherwise is a CSAPR NO_X Ozone Season Group 3 unit under paragraph (a) of this section and that meets the requirements set forth in paragraph (b)(1)(i) or (b)(2)(i) of this section shall not be a CSAPR NO_X Ozone Season Group 3 unit:

(1)(i) Any unit:

(A) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If, after qualifying under paragraph (b)(1)(i) of this section as not being a CSAPR NO_X Ozone Season Group 3 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(1)(i) of this section, the unit shall become a CSAPR NO_X Ozone Season Group 3 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section. The unit shall thereafter continue to be a CSAPR NO_X Ozone Season Group 3 unit.

(2)(i) Any unit:

(A) Qualifying as a solid waste incineration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a solid waste incineration unit throughout each calendar year ending

after the later of 2005 or such 12-month period; and

(B) With an average annual fuel consumption of fossil fuel for the first 3 consecutive calendar years of operation starting no earlier than 2005 of less than 20 percent (on a Btu basis) and an average annual fuel consumption of fossil fuel for any 3 consecutive calendar years thereafter of less than 20 percent (on a Btu basis).

(ii) If, after qualifying under paragraph (b)(2)(i) of this section as not being a CSAPR NO_X Ozone Season Group 3 unit, a unit subsequently no longer meets all the requirements of paragraph (b)(2)(i) of this section, the unit shall become a CSAPR NO_X Ozone Season Group 3 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 2005 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more. The unit shall thereafter continue to be a CSAPR NO_X Ozone Season Group 3 unit.

(c) A certifying official of an owner or operator of any unit or other equipment may submit a petition (including any supporting documents) to the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section or a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, of the CSAPR NO_X Ozone Season Group 3 Trading Program to the unit or other equipment.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit or other equipment and the relevant facts about the unit or other equipment. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: ''I am authorized to make this submission on behalf of the owners and operators of the unit or other equipment for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) *Response.* The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CSAPR NO_X Ozone Season Group 3 Trading Program to the unit or other equipment shall be binding on any State or permitting authority unless the Administrator determines that the petition or other documents or information provided in connection with the petition contained significant, relevant errors or omissions.

§ 97.1005 Retired unit exemption.

(a)(1) Any CSAPR NO_X Ozone Season Group 3 unit that is permanently retired shall be exempt from § 97.1006(b) and (c)(1), § 97.1024, and §§ 97.1030 through 97.1035.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CSAPR NO_X Ozone Season Group 3 unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

(b)(1) A unit exempt under paragraph (a) of this section shall not emit any NO_X, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CSAPR NO_X Ozone Season Group 3 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under this subpart, as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 97.1006 Standard requirements.

(a) *Designated representative requirements.* The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.1013 through 97.1018.

(b) *Emissions monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the designated representative, of each CSAPR NO_X Ozone Season Group 3 source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.1030 through 97.1035.

(2) The emissions data determined in accordance with §§ 97.1030 through 97.1035 shall be used to calculate allocations of CSAPR NO_X Ozone Season Group 3 allowances under §§ 97.1011(a)(2) and (b) and 97.1012 and to determine compliance with the CSAPR NO_X Ozone Season Group 3 emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.1030 through 97.1035 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *NO_X emissions requirements*—(1) *CSAPR NO_X Ozone Season Group 3 emissions limitation.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR NO_X Ozone Season Group 3 source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall hold, in the source's compliance account, CSAPR NO_X Ozone Season Group 3 allowances available for deduction for such control period under § 97.1024(a) in an amount not less than the tons of total NO_X emissions for such control period from all CSAPR NO_X Ozone Season Group 3 units at the source.

(ii) If total NO_X emissions during a control period in a given year from the CSAPR NO_X Ozone Season Group 3 units at a CSAPR NO_X Ozone Season Group 3 source are in excess of the CSAPR NO_X Ozone Season Group 3 emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall hold the CSAPR NO_X Ozone Season Group 3 allowances required for deduction under § 97.1024(d); and

(B) The owners and operators of the source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *CSAPR NO_X Ozone Season Group 3 assurance provisions.* (i) If total NO_X emissions during a control period in a given year from all base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such NO_X emissions during such control period exceeds the common designated representative's assurance level for the State and such control period, shall hold (in the assurance account established for the owners and operators of such group) CSAPR NO_X Ozone Season Group 3 allowances available for deduction for such control period under § 97.1025(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.1025(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such NO_X emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units in the State (and Indian country within the borders of such State) for such control period, by which each common designated representative's share of such NO_X emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total NO_X emissions from all base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in the State (and Indian country within the borders of such State) for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the CSAPR NO_X Ozone Season Group 3 allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after the year of such control period.

(iii) Total NO_X emissions from all base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total NO_X emissions exceed the sum, for such control period, of the State NO_X Ozone Season Group 3 trading budget under § 97.1010(a), the State's variability limit under § 97.1010(b), and, for the control period in 2021 only, the product (rounded to the nearest allowance) of 1.21 multiplied by the supplemental amount of CSAPR NO_X Ozone Season Group 3 allowances determined for the State under § 97.1010(d).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total NO_X emissions from all base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period exceed the State assurance level or if a common designated representative's share of total NO_X emissions from the base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold CSAPR NO_X Ozone Season Group 3 allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section:

(A) The owners and operators shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(B) Each CSAPR NO_X Ozone Season Group 3 allowance that the owners and operators fail to hold for such control period in accordance with paragraphs (c)(2)(i) through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) *Compliance periods.* (i) A CSAPR NO_X Ozone Season Group 3 unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2021 or the deadline for meeting the unit's monitor certification requirements under § 97.1030(b) and for each control period thereafter.

(ii) A base CSAPR NO_X Ozone Season Group 3 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of May 1, 2021 or the deadline for meeting the unit's monitor certification requirements under § 97.1030(b) and for each control period thereafter.

(4) *Vintage of CSAPR NO_X Ozone Season Group 3 allowances held for compliance.* (i) A CSAPR NO_X Ozone Season Group 3 allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a CSAPR NO_X Ozone Season Group 3 allowance that was allocated or auctioned for such control period or a control period in a prior year.

(ii) A CSAPR NO_X Ozone Season Group 3 allowance held for compliance with the requirements under paragraphs (c)(1)(ii)(A) and (c)(2)(i) through (iii) of this section for a control period in a given year must be a CSAPR NO_X Ozone Season Group 3 allowance that was allocated or auctioned for a control period in a prior year or the control period in the given year or in the immediately following year.

(5) *Allowance Management System requirements.* Each CSAPR NO_X Ozone Season Group 3 allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) *Limited authorization.* A CSAPR NO_X Ozone Season Group 3 allowance is a limited authorization to emit one ton of NO_X during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the CSAPR NO_X Ozone Season Group 3 Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary

or appropriate to implement any provision of the Clean Air Act.

(7) *Property right.* A CSAPR NO_X Ozone Season Group 3 allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of CSAPR NO_X Ozone Season Group 3 allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report NO_X emissions using a continuous emission monitoring system (under subpart H of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.1030 through 97.1035 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each CSAPR NO_X Ozone Season Group 3 source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Administrator.

(i) The certificate of representation under § 97.1016 for the designated representative for the source and each CSAPR NO_X Ozone Season Group 3 unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.1016 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the CSAPR NO_X Ozone Season Group 3 Trading Program.

(2) The designated representative of a CSAPR NO_X Ozone Season Group 3 source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall make all submissions required under the CSAPR NO_X Ozone Season Group 3 Trading Program, except as provided in § 97.1018. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability.* (1) Any provision of the CSAPR NO_X Ozone Season Group 3 Trading Program that applies to a CSAPR NO_X Ozone Season Group 3 source or the designated representative of a CSAPR NO_X Ozone Season Group 3 source shall also apply to the owners and operators of such source and of the CSAPR NO_X Ozone Season Group 3 units at the source.

(2) Any provision of the CSAPR NO_X Ozone Season Group 3 Trading Program that applies to a CSAPR NO_X Ozone Season Group 3 unit or the designated representative of a CSAPR NO_X Ozone Season Group 3 unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CSAPR NO_X Ozone Season Group 3 Trading Program or exemption under § 97.1005 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a CSAPR NO_X Ozone Season Group 3 source or CSAPR NO_X Ozone Season Group 3 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.1007 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CSAPR NO_X Ozone Season Group 3 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CSAPR NO_X Ozone Season Group 3 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CSAPR NO_X Ozone Season Group 3 Trading Program, is not a business day, the time period shall be extended to the next business day.

§ 97.1008 Administrative appeal procedures.

The administrative appeal procedures for decisions of the Administrator under the CSAPR NO_X Ozone Season Group 3 Trading Program are set forth in part 78 of this chapter.

§ 97.1009 [Reserved]

§ 97.1010 State NO_X Ozone Season Group 3 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

(a) The State NO_X Ozone Season Group 3 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of CSAPR NO_X Ozone Season Group 3 allowances for the control periods in 2021, 2022, 2023, and 2024 and thereafter are as indicated in Tables 1, 2, and 3 to this paragraph, respectively:

TABLE 1 TO PARAGRAPH (a)—STATE NO_X OZONE SEASON GROUP 3 TRADING BUDGETS BY YEAR

[Tons]

State	2021	2022	2023	2024 and thereafter
Illinois	9,102	9,102	8,179	8,059
Indiana	13,051	12,582	12,553	9,564
Kentucky	15,300	14,051	14,051	14,051
Louisiana	14,818	14,818	14,818	14,818
Maryland	1,499	1,266	1,266	1,348
Michigan	12,727	12,290	9,975	9,786
New Jersey	1,253	1,253	1,253	1,253
New York	3,416	3,416	3,421	3,403

TABLE 1 TO PARAGRAPH (a)—STATE NO_X OZONE SEASON GROUP 3 TRADING BUDGETS BY YEAR—Continued

[Tons]

State	2021	2022	2023	2024 and thereafter
Ohio	9,690	9,773	9,773	9,773
Pennsylvania	8,379	8,373	8,373	8,373
Virginia	4,516	3,897	3,980	3,663
West Virginia	13,334	12,884	12,884	12,884

TABLE 2 TO PARAGRAPH (a)—NEW UNIT SET-ASIDES BY YEAR

[Tons]

State	2021	2022	2023	2024 and thereafter
Illinois	265	265	248	244
Indiana	262	254	249	190
Kentucky	309	283	283	283
Louisiana	430	430	430	430
Maryland	135	115	115	122
Michigan	500	482	388	382
New Jersey	27	27	27	27
New York	168	168	168	167
Ohio	291	290	290	290
Pennsylvania	335	339	339	339
Virginia	185	161	166	150
West Virginia	266	261	261	261

TABLE 3 TO PARAGRAPH (a)—INDIAN COUNTRY NEW UNIT SET-ASIDES BY YEAR

[Tons]

State	2021	2022	2023	2024 and thereafter
Illinois.				
Indiana.				
Kentucky.				
Louisiana	15	15	15	15
Maryland.				
Michigan	13	12	10	10
New Jersey.				
New York	3	3	3	3
Ohio.				
Pennsylvania.				
Virginia.				
West Virginia.				

(b) The States' variability limits for the State NO_X Ozone Season Group 3 trading budgets for the control periods in 2021, 2022, 2023, and 2024 and thereafter are as indicated in Table 4 to this paragraph:

TABLE 4 TO PARAGRAPH (b)—VARIABILITY LIMITS BY YEAR

[Tons]

State	2021	2022	2023	2024 and thereafter
Illinois	1,911	1,911	1,718	1,692
Indiana	2,741	2,642	2,636	2,008
Kentucky	3,213	2,951	2,951	2,951
Louisiana	3,112	3,112	3,112	3,112
Maryland	315	266	266	283
Michigan	2,673	2,581	2,095	2,055
New Jersey	263	263	263	263
New York	717	717	718	715
Ohio	2,035	2,052	2,052	2,052
Pennsylvania	1,760	1,758	1,758	1,758
Virginia	948	818	836	769
West Virginia	2,800	2,706	2,706	2,706

(c) Each State NO_X Ozone Season Group 3 trading budget in this section includes any tons in a new unit set-aside or Indian country new unit set-aside but does not include any tons in a variability limit.

(d) For the control period in 2021 only, the Administrator will determine for each State a supplemental amount of CSAPR NO_X Ozone Season Group 3 allowances computed as the product (rounded to the nearest allowance) of the remainder of the State NO_X Ozone Season Group 2 trading budget for the control period in 2020 under § 97.810(a) minus the State NO_X Ozone Season Group 3 trading budget for the control period in 2021 under paragraph (a) of this section multiplied by a fraction whose numerator is the number of days from May 1, 2021 through June 28, 2021, inclusive, and whose denominator is 153.

§ 97.1011 Timing requirements for CSAPR NO_X Ozone Season Group 3 allowance allocations.

(a) *Existing units.* (1) CSAPR NO_X Ozone Season Group 3 allowances are allocated, for the control periods in 2021 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a CSAPR NO_X Ozone Season Group 3 unit, and not providing an allocation to a unit in such notice does not constitute a determination that the unit is not a CSAPR NO_X Ozone Season Group 3 unit. For the control period in 2021, a unit's allocation under this paragraph will include the unit's share (if any) of the supplemental amount of CSAPR NO_X Ozone Season Group 3 allowances determined for the State in which the unit is located under § 97.1010(d).

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2020, during the control period in two consecutive years, such unit will not be allocated the CSAPR NO_X Ozone Season Group 3 allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All CSAPR NO_X Ozone Season Group 3 allowances that would otherwise have been allocated to such unit will be allocated to the new unit set-aside for the State where such unit is located and for the respective years involved. If such unit resumes operation, the Administrator will allocate CSAPR NO_X Ozone Season Group 3 allowances to the unit in accordance with paragraph (b) of this section.

(b) *New units*—(1) *New unit set-asides.* (i) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 3 allowance allocation to each CSAPR NO_X Ozone Season Group 3 unit in a State, in accordance with § 97.1012(a)(2) through (7), (10), and (12) and §§ 97.1006(b)(2) and 97.1030 through 97.1035, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_X Ozone Season Group 3 units) are in accordance with the provisions referenced in paragraph (b)(1)(i) of this section.

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(1)(i) of this section. By May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

(iii) [Reserved]

(iv) [Reserved]

(v) To the extent any CSAPR NO_X Ozone Season Group 3 allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR NO_X Ozone Season Group 3 allowances in accordance with § 97.1012(a)(10).

(2) *Indian country new unit set-asides.* (i) By March 1, 2022 and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_X Ozone Season Group 3 allowance allocation to each CSAPR NO_X Ozone Season Group 3 unit in Indian country within the borders of a State, in accordance with § 97.1012(b)(2) through (7), (10), and (12) and §§ 97.1006(b)(2) and 97.1030 through 97.1035, for the control period in the year before the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_X Ozone Season Group 3 units) are in accordance with the provisions referenced in paragraph (b)(2)(i) of this section.

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(i) of this section. By May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

(iii) [Reserved]

(iv) [Reserved]

(v) To the extent any CSAPR NO_X Ozone Season Group 3 allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such CSAPR NO_X Ozone Season Group 3 allowances in accordance with § 97.1012(b)(10).

(c) *Units incorrectly allocated CSAPR NO_X Ozone Season Group 3 allowances.* (1) For each control period in 2021 and thereafter, if the Administrator determines that CSAPR NO_X Ozone Season Group 3 allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter, where such control period and the recipient are covered by the provisions of paragraph

(c)(1)(i) of this section or were allocated under § 97.1012(a)(2) through (7) and (12) and (b)(2) through (7) and (12), or under a provision of a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)(A) The recipient is not actually a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004 as of May 1, 2021 and is allocated CSAPR NO_X Ozone Season Group 3 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter, the recipient is not actually a CSAPR NO_X Ozone Season Group 3 unit as of May 1, 2021 and is allocated CSAPR NO_X Ozone Season Group 3 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR NO_X Ozone Season Group 3 units as of May 1, 2021; or

(B) The recipient is not located as of May 1 of the control period in the State from whose NO_X Ozone Season Group 3 trading budget the CSAPR NO_X Ozone Season Group 3 allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a CSAPR NO_X Ozone Season Group 3 unit under § 97.1004 as of May 1 of such control period and is allocated CSAPR NO_X Ozone Season Group 3 allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, the recipient is not actually a CSAPR NO_X Ozone Season Group 3 unit as of May 1 of such control period and is allocated CSAPR NO_X Ozone Season Group 3 allowances for such control period that the SIP revision provides should be allocated only to recipients that are CSAPR NO_X Ozone Season Group 3 units as of May 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR NO_X Ozone Season Group 3 allowances under § 97.1021.

(3) If the Administrator already recorded such CSAPR NO_X Ozone Season Group 3 allowances under § 97.1021 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.1024(b) for such control period, then the Administrator will deduct from the account in which such CSAPR NO_X Ozone Season Group 3 allowances were recorded an amount of CSAPR NO_X Ozone Season Group 3 allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR NO_X Ozone Season Group 3 allowances. The authorized account representative shall ensure that there are sufficient CSAPR NO_X Ozone Season Group 3 allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR NO_X Ozone Season Group 3 allowances under § 97.1021 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.1024(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR NO_X Ozone Season Group 3 allowances.

(5)(i) With regard to the CSAPR NO_X Ozone Season Group 3 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such CSAPR NO_X Ozone Season Group 3 allowances to the new unit set-aside for such control period (or a subsequent control period) for the State from whose NO_X Ozone Season Group 3 trading budget the CSAPR NO_X Ozone Season Group 3 allowances were allocated; or

(B) If the State has a SIP revision approved under § 52.38(b)(11) or (12) of this chapter covering such control period, include such CSAPR NO_X Ozone Season Group 3 allowances in the portion of the State NO_X Ozone Season Group 3 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(ii) With regard to the CSAPR NO_X Ozone Season Group 3 allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will:

(A) Transfer such CSAPR NO_X Ozone Season Group 3 allowances to the new unit set-aside for such control period (or a subsequent control period); or

(B) If the State has a SIP revision approved under § 52.38(b)(11) or (12) of this chapter covering such control period, include such CSAPR NO_X Ozone Season Group 3 allowances in the portion of the State NO_X Ozone Season Group 3 trading budget that may be allocated for such control period (or a subsequent control period) in accordance with such SIP revision.

(iii) With regard to the CSAPR NO_X Ozone Season Group 3 allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this section, the Administrator will transfer such CSAPR NO_X Ozone Season Group 3 allowances to the Indian country new unit set-aside for such control period (or a subsequent control period).

§ 97.1012 CSAPR NO_X Ozone Season Group 3 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* For each control period in 2021 and thereafter and for the CSAPR NO_X Ozone Season Group 3 units in each State, the Administrator will allocate CSAPR NO_X Ozone Season Group 3 allowances to the CSAPR NO_X Ozone Season Group 3 units as follows:

(1) The CSAPR NO_X Ozone Season Group 3 allowances will be allocated to the following CSAPR NO_X Ozone Season Group 3 units, except as provided in paragraph (a)(10) of this section:

(i) CSAPR NO_X Ozone Season Group 3 units that are not allocated an amount of CSAPR NO_X Ozone Season Group 3 allowances in the notice of data availability issued under § 97.1011(a)(1) and that have deadlines for certification of monitoring systems under § 97.1030(b) not later than September 30 of the year of the control period;

(ii) CSAPR NO_X Ozone Season Group 3 units whose allocation of an amount of CSAPR NO_X Ozone Season Group 3 allowances for such control period in the notice of data availability issued under § 97.1011(a)(1) is covered by § 97.1011(c)(2) or (3);

(iii) CSAPR NO_X Ozone Season Group 3 units that are allocated an amount of CSAPR NO_X Ozone Season Group 3 allowances for such control period in the notice of data availability issued under § 97.1011(a)(1), which allocation is terminated for such control period pursuant to § 97.1011(a)(2), and that operate during such control period; or

(iv) [Reserved]

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR NO_X Ozone Season Group 3 allowances in an amount equal to the applicable amount of tons of NO_X emissions as set forth in § 97.1010(a) and will be allocated additional CSAPR NO_X Ozone Season Group 3 allowances (if any) in accordance with § 97.1011(a)(2) and (c)(5) and paragraph (b)(10) of this section.

(3) The Administrator will determine, for each CSAPR NO_X Ozone Season Group 3 unit described in paragraph (a)(1) of this section, an allocation of CSAPR NO_X Ozone Season Group 3 allowances for the latest of the following control periods and for each subsequent control period:

(i) The control period in 2021;

(ii) The control period containing the deadline for certification of the CSAPR NO_X Ozone Season Group 3 unit's monitoring systems under § 97.1030(b);

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR NO_X Ozone Season Group 3 unit operates in the State after operating in another jurisdiction and for which the unit is not already allocated one or more CSAPR NO_X Ozone Season Group 3 allowances; and

(iv) For a unit described in paragraph (a)(1)(iii) of this section, the control period in which the unit resumes operation.

(4)(i) The allocation to each CSAPR NO_X Ozone Season Group 3 unit described in paragraphs (a)(1)(i) through (iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit's total tons of NO_X emissions during the control period.

(ii) The Administrator will adjust the allocation amount in paragraph (a)(4)(i) of this section in accordance with paragraphs (a)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR NO_X Ozone Season Group 3 allowances determined for all such CSAPR NO_X Ozone Season Group 3 units under paragraph (a)(4)(i) of this section in the State for such control period.

(6) If the amount of CSAPR NO_X Ozone Season Group 3 allowances in the new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (a)(5) of this section, then the Administrator will allocate the amount of CSAPR NO_X Ozone Season Group 3 allowances determined for each such CSAPR NO_X Ozone Season Group 3 unit under paragraph (a)(4)(i) of this section.

(7) If the amount of CSAPR NO_X Ozone Season Group 3 allowances in the new unit set-aside for the State for such control period is less than the sum under paragraph (a)(5) of this section, then the Administrator will allocate to each such CSAPR NO_X Ozone Season Group 3 unit the amount of the CSAPR NO_X Ozone Season Group 3 allowances determined under paragraph (a)(4)(i) of this section for the unit, multiplied by the amount of CSAPR NO_X Ozone Season Group 3 allowances in the new unit set-aside for such control period, divided by the sum under paragraph (a)(5) of this section, and rounded to the nearest allowance.

(8) [Reserved]

(9) [Reserved]

(10) If, after completion of the procedures under paragraphs (a)(2) through (7) and (12) of this section for a control period, any unallocated CSAPR NO_X Ozone Season Group 3 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR NO_X Ozone Season Group 3 unit that is in the State, is allocated an amount of CSAPR NO_X Ozone Season Group 3 allowances in the notice of data availability issued under § 97.1011(a)(1), and continues to be allocated CSAPR NO_X Ozone Season Group 3 allowances for such control period in accordance with § 97.1011(a)(2), an amount of CSAPR NO_X Ozone Season Group 3 allowances equal to the following: The total amount of such remaining unallocated CSAPR NO_X Ozone Season Group 3 allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.1011(a) for such control period, divided by the remainder of the amount of tons in the applicable State NO_X Ozone Season Group 3 trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(11) The Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(1)(i), (ii), and (v), of the amount of CSAPR NO_X Ozone Season Group 3 allowances allocated under paragraphs (a)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 3 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (a)(2) through (11) of this section, if the calculations of allocations from a new unit set-aside for a control period in a given year under paragraph (a)(7) of this section or paragraphs (a)(6) and (10) of this section would otherwise result in total allocations from such new unit set-aside unequal to the total amount of such new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 3 units in descending order based on such units' allocation amounts under paragraph (a)(7) or (10) of this section, as applicable, and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Ozone Season Group 3 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such new unit set-aside equal the total amount of such new unit set-aside.

(b) *Allocations from Indian country new unit set-asides.* For each control period in 2021 and thereafter and for the CSAPR NO_X Ozone Season Group 3 units in Indian country within the borders of each State, the Administrator will allocate CSAPR NO_X Ozone Season Group 3 allowances to the CSAPR NO_X Ozone Season Group 3 units as follows:

(1) The CSAPR NO_X Ozone Season Group 3 allowances will be allocated to the following CSAPR NO_X Ozone Season Group 3 units, except as provided in paragraph (b)(10) of this section:

(i) CSAPR NO_X Ozone Season Group 3 units that are not allocated an amount of CSAPR NO_X Ozone Season Group 3 allowances in the notice of data availability issued under § 97.1011(a)(1) and that have deadlines for certification of monitoring systems under § 97.1030(b) not later than September 30 of the year of the control period; or

(ii) [Reserved]

(2) The Administrator will establish a separate Indian country new unit set-aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR NO_X Ozone Season Group 3 allowances in an amount equal to the applicable amount of tons of NO_X emissions as set forth in § 97.1010(a) and will be allocated additional CSAPR NO_X Ozone Season Group 3 allowances (if any) in accordance with § 97.1011(c)(5).

(3) The Administrator will determine, for each CSAPR NO_X Ozone Season Group 3 unit described in paragraph

(b)(1) of this section, an allocation of CSAPR NO_X Ozone Season Group 3 allowances for the later of the following control periods and for each subsequent control period:

(i) The control period in 2021; and

(ii) The control period containing the deadline for certification of the CSAPR NO_X Ozone Season Group 3 unit's monitoring systems under § 97.1030(b).

(4)(i) The allocation to each CSAPR NO_X Ozone Season Group 3 unit described in paragraph (b)(1)(i) of this section and for each control period described in paragraph (b)(3) of this section will be an amount equal to the unit's total tons of NO_X emissions during the control period.

(ii) The Administrator will adjust the allocation amount in paragraph (b)(4)(i) of this section in accordance with paragraphs (b)(5) through (7) and (12) of this section.

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR NO_X Ozone Season Group 3 allowances determined for all such CSAPR NO_X Ozone Season Group 3 units under paragraph (b)(4)(i) of this section in Indian country within the borders of the State for such control period.

(6) If the amount of CSAPR NO_X Ozone Season Group 3 allowances in the Indian country new unit set-aside for the State for such control period is greater than or equal to the sum under paragraph (b)(5) of this section, then the Administrator will allocate the amount of CSAPR NO_X Ozone Season Group 3 allowances determined for each such CSAPR NO_X Ozone Season Group 3 unit under paragraph (b)(4)(i) of this section.

(7) If the amount of CSAPR NO_X Ozone Season Group 3 allowances in the Indian country new unit set-aside for the State for such control period is less than the sum under paragraph (b)(5) of this section, then the Administrator will allocate to each such CSAPR NO_X Ozone Season Group 3 unit the amount of the CSAPR NO_X Ozone Season Group 3 allowances determined under paragraph (b)(4)(i) of this section for the unit, multiplied by the amount of CSAPR NO_X Ozone Season Group 3 allowances in the Indian country new unit set-aside for such control period, divided by the sum under paragraph (b)(5) of this section, and rounded to the nearest allowance.

(8) [Reserved]

(9) [Reserved]

(10) If, after completion of the procedures under paragraphs (b)(2) through (7) and (12) of this section for a control period, any unallocated CSAPR NO_X Ozone Season Group 3 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will:

(i) Transfer such unallocated CSAPR NO_X Ozone Season Group 3 allowances to the new unit set-aside for the State for such control period; or

(ii) If the State has a SIP revision approved under § 52.38(b)(11) or (12) of this chapter covering such control period, include such unallocated CSAPR NO_X Ozone Season Group 3 allowances in the portion of the State NO_X Ozone Season Group 3 trading budget that may be allocated for such control period in accordance with such SIP revision.

(11) The Administrator will notify the public, through the promulgation of the notices of data availability described in § 97.1011(b)(2)(i), (ii), and (v), of the amount of CSAPR NO_X Ozone Season Group 3 allowances allocated under paragraphs (b)(2) through (7), (10), and (12) of this section for such control period to each CSAPR NO_X Ozone Season Group 3 unit eligible for such allocation.

(12) Notwithstanding the requirements of paragraphs (b)(2) through (11) of this section, if the calculations of allocations from an Indian country new unit set-aside for a control period in a given year under paragraph (b)(7) of this section would otherwise result in total allocations from such Indian country new unit set-aside unequal to the total amount of such Indian country new unit set-aside, then the Administrator will adjust the results of such calculations as follows. The Administrator will list the CSAPR NO_X Ozone Season Group 3 units in descending order based on such units' allocation amounts under paragraph (b)(7) of this section and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount under such paragraph upward or downward by one CSAPR NO_X Ozone Season Group 3 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total allocations from such Indian country new unit set-aside equal the total amount of such Indian country new unit set-aside.

§ 97.1013 Authorization of designated representative and alternate designated representative.

(a) Except as provided under § 97.1015, each CSAPR NO_X Ozone Season Group 3 source, including all CSAPR NO_X Ozone Season Group 3 units at the source, shall have one and only one designated representative, with regard to all matters under the CSAPR NO_X Ozone Season Group 3 Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR NO_X Ozone Season Group 3 units at the source and shall act in accordance with the certification statement in § 97.1016(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.1016:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each CSAPR NO_X Ozone Season Group 3 unit at the source in all matters pertaining to the CSAPR NO_X Ozone Season Group 3 Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under § 97.1015, each CSAPR NO_X Ozone Season Group 3 source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all CSAPR NO_X Ozone Season Group 3 units at the source and shall act in accordance with the certification statement in § 97.1016(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.1016:

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each CSAPR NO_X Ozone Season Group 3 unit at the source shall be bound by any decision or order

issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, § 97.1002, and §§ 97.1014 through 97.1018, whenever the term ''designated representative'' (as distinguished from the term ''common designated representative'') is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

§ 97.1014 Responsibilities of designated representative and alternate designated representative.

(a) Except as provided under § 97.1018 concerning delegation of authority to make submissions, each submission under the CSAPR NO_X Ozone Season Group 3 Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each CSAPR NO_X Ozone Season Group 3 source and CSAPR NO_X Ozone Season Group 3 unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate designated representative: ''I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(b) The Administrator will accept or act on a submission made for a CSAPR NO_X Ozone Season Group 3 source or a CSAPR NO_X Ozone Season Group 3 unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.1018.

§ 97.1015 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.1016. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the CSAPR NO_X Ozone Season Group 3 source and the CSAPR NO_X Ozone Season Group 3 units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.1016. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the CSAPR NO_X Ozone Season Group 3 source and the CSAPR NO_X Ozone Season Group 3 units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CSAPR NO_X Ozone Season Group 3 source or a CSAPR NO_X Ozone Season Group 3 unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.1016, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a CSAPR NO_X Ozone Season Group 3 source or a CSAPR NO_X Ozone Season Group 3 unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.1016 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which units are located at a CSAPR NO_X Ozone Season Group 3 source (including the addition or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under § 97.1016 amending the list of units to reflect the change.

(1) If the change is the addition of a unit that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

§ 97.1016 Certificate of representation.

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CSAPR NO_X Ozone Season Group 3 source, and each CSAPR NO_X Ozone Season Group 3 unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, actual or projected date of commencement of commercial operation, and a statement of whether such source is located in Indian country. If a projected date of commencement of commercial operation is provided, the actual date of commencement of commercial operation shall be provided when such information becomes available;

(2) The name, address, email address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative;

(3) A list of the owners and operators of the CSAPR NO_X Ozone Season Group

3 source and of each CSAPR NO_X Ozone Season Group 3 unit at the source;

(4) The following certification statements by the designated representative and any alternate designated representative—

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CSAPR NO_X Ozone Season Group 3 unit at the source.'';

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR NO_X Ozone Season Group 3 Trading Program on behalf of the owners and operators of the source and of each CSAPR NO_X Ozone Season Group 3 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit.''; and

(iii) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CSAPR NO_X Ozone Season Group 3 unit, or where a utility or industrial customer purchases power from a CSAPR NO_X Ozone Season Group 3 unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CSAPR NO_X Ozone Season Group 3 unit at the source; and CSAPR NO_X Ozone Season Group 3 allowances and proceeds of transactions involving CSAPR NO_X Ozone Season Group 3 allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CSAPR NO_X Ozone Season Group 3 allowances by contract, CSAPR NO_X Ozone Season Group 3 allowances and proceeds of transactions involving CSAPR NO_X Ozone Season Group 3 allowances will be deemed to be held or distributed in accordance with the contract.''; and

(5) The signature of the designated representative and any alternate designated representative and the dates signed.

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(c) A certificate of representation under this section, § 97.516, or § 97.816 that complies with the provisions of paragraph (a) of this section except that it contains the phrase ''TR NO_X Ozone Season'' or the phrase ''CSAPR NO_X Ozone Season Group 2'' in place of the phrase ''CSAPR NO_X Ozone Season Group 3'' in the required certification statements will be considered a complete certificate of representation under this section, and the certification statements included in such certificate of representation will be interpreted for purposes of this subpart as if the phrase ''CSAPR NO_X Ozone Season Group 3'' appeared in place of the phrase ''TR NO_X Ozone Season'' or the phrase ''CSAPR NO_X Ozone Season Group 2''.

§ 97.1017 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under § 97.1016 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.1016 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the CSAPR NO_X Ozone Season Group 3 Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of CSAPR NO_X Ozone Season Group 3 allowance transfers.

§ 97.1018 Delegation by designated representative and alternate designated representative.

(a) A designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(b) An alternate designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, email address, telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative;

(2) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such designated representative or alternate designated representative:

(i) ''I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1018(d) shall be deemed to be an electronic submission by me.''; and

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1018(d), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.1018 is terminated.''

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such designated representative or alternate designated representative, as

appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the designated representative or alternate designated representative submitting such notice of delegation.

(f) A notice of delegation submitted under paragraph (c) of this section, § 97.518(c), or § 97.818(c) that complies with the provisions of paragraph (c) of this section except that it contains the terms ''40 CFR 97.518(d)'' and ''40 CFR 97.518'' or the terms ''40 CFR 97.818(d)'' and ''40 CFR 97.818'' in place of the terms ''40 CFR 97.1018(d)'' and ''40 CFR 97.1018'', respectively, in the required certification statements will be considered a valid notice of delegation submitted under paragraph (c) of this section, and the certification statements included in such notice of delegation will be interpreted for purposes of this subpart as if the terms ''40 CFR 97.1018(d)'' and ''40 CFR 97.1018'' appeared in place of the terms ''40 CFR 97.518(d)'' and ''40 CFR 97.518'' or the terms ''40 CFR 97.818(d)'' and ''40 CFR 97.818'', respectively.

§ 97.1019 [Reserved]

§ 97.1020 Establishment of compliance accounts, assurance accounts, and general accounts.

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 97.1016, the Administrator will establish a compliance account for the CSAPR NO_X Ozone Season Group 3 source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *Assurance accounts.* The Administrator will establish assurance accounts for certain owners and operators and States in accordance with § 97.1025(b)(3).

(c) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account, for the purpose of holding and transferring CSAPR NO_X Ozone Season Group 3 allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the persons who have an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

(ii) A complete application for a general account shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, email address (if any), telephone number, and facsimile transmission number (if any) of the authorized account representative and any alternate authorized account representative;

(B) An identifying name for the general account;

(C) A list of all persons subject to a binding agreement for the authorized account representative and any alternate authorized account representative to represent their ownership interest with respect to the CSAPR NO_X Ozone Season Group 3 allowances held in the general account;

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: ''I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CSAPR NO_X Ozone Season Group 3 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the general account.''; and

(E) The signature of the authorized account representative and any alternate authorized account representative and the dates signed.

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(iv) An application for a general account under paragraph (c)(1) of this section, § 97.520(c)(1), or § 97.820(c)(1) that complies with the provisions of paragraph (c)(1) of this section except that it contains the phrase ''TR NO_X Ozone Season'' or the phrase ''CSAPR NO_X Ozone Season Group 2'' in place of the phrase ''CSAPR NO_X Ozone Season Group 3'' in the required certification statement will be considered a complete application for a general account under paragraph (c)(1) of this section, and the certification statement included in such application for a general account will be interpreted for purposes of this subpart as if the phrase ''CSAPR NO_X Ozone Season Group 3'' appeared in place of the phrase ''TR NO_X Ozone Season'' or the phrase ''CSAPR NO_X Ozone Season Group 2''.

(2) *Authorization of authorized account representative and alternate authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (c)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances held in the general account in all matters pertaining to the CSAPR NO_X Ozone Season Group 3 Trading Program, notwithstanding any agreement between the authorized account representative and such person.

(B) Any alternate authorized account representative shall be authorized, and any representation, action, inaction, or submission by any alternate authorized account representative shall be deemed to be a representation, action, inaction, or submission by the authorized account representative.

(C) Each person who has an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances held in the general account shall be bound by any decision or order

issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (c)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CSAPR NO_X Ozone Season Group 3 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(iii) Except in this section, whenever the term ''authorized account representative'' is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(iv) A certification statement submitted in accordance with paragraph (c)(2)(ii) of this section that contains the phrase ''TR NO_X Ozone Season'' or the phrase ''CSAPR NO_X Ozone Season Group 2'' will be interpreted for purposes of this subpart as if the phrase ''CSAPR NO_X Ozone Season Group 3'' appeared in place of the phrase ''TR NO_X Ozone Season'' or the phrase ''CSAPR NO_X Ozone Season Group 2''.

(3) *Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.* (i) The authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new authorized account representative and the persons with an ownership interest with respect to the CSAPR NO_X Ozone Season Group 3 allowances in the general account.

(ii) The alternate authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (c)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the CSAPR NO_X Ozone Season Group 3 allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to CSAPR NO_X Ozone Season Group 3 allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CSAPR NO_X Ozone Season Group 3 allowances in the general account to include the change.

(4) *Objections concerning authorized account representative and alternate authorized account representative.* (i) Once a complete application for a general account under paragraph (c)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (c)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (c)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the CSAPR NO_X Ozone Season Group 3 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account, including private legal disputes concerning the proceeds of CSAPR NO_X Ozone Season Group 3 allowance transfers.

(5) *Delegation by authorized account representative and alternate authorized account representative.* (i) An authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(ii) An alternate authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (c)(5)(i) or (ii) of this section, the authorized account representative or alternate authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, email address, telephone number, and facsimile transmission number (if any) of such authorized account representative or

alternate authorized account representative;

(B) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (c)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: ''I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1020(c)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.1020(c)(5)(iv), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.1020(c)(5) is terminated.''

(iv) A notice of delegation submitted under paragraph (c)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such authorized account representative or alternate authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (c)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (c)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(vi) A notice of delegation submitted under paragraph (c)(5)(iii) of this section, § 97.520(c)(5)(iii), or § 97.820(c)(5)(iii) that complies with the provisions of paragraph (c)(5)(iii) of this section except that it contains the terms ''40 CFR 97.520(c)(5)(iv)'' and ''40 CFR 97.520(c)(5)'' or the terms ''40 CFR 97.820(c)(5)(iv)'' and ''40 CFR 97.820(c)(5)'' in place of the terms ''40 CFR 97.1020(c)(5)(iv)'' and ''40 CFR 97.1020(c)(5)'', respectively, in the required certification statements will be considered a valid notice of delegation submitted under paragraph (c)(5)(iii) of this section, and the certification statements included in such notice of delegation will be interpreted for purposes of this subpart as if the terms ''40 CFR 97.1020(c)(5)(iv)'' and ''40 CFR 97.1020(c)(5)'' appeared in place of the terms ''40 CFR 97.520(c)(5)(iv)'' and ''40 CFR 97.520(c)(5)'' or the terms ''40 CFR 97.820(c)(5)(iv)'' and ''40 CFR 97.820(c)(5)'', respectively.

(6) *Closing a general account.* (i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted CSAPR NO_X Ozone Season Group 3 allowance transfer under § 97.1022 for any CSAPR NO_X Ozone Season Group 3 allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no CSAPR NO_X Ozone Season Group 3 allowance transfers to or from the account for a 12-month period or longer and does not contain any CSAPR NO_X Ozone Season Group 3 allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted CSAPR NO_X Ozone Season Group 3 allowance transfer under § 97.1022 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

(d) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a), (b), or (c) of this section.

(e) *Responsibilities of authorized account representative and alternate authorized account representative.* After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CSAPR NO_X Ozone Season Group 3 allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.1014(a) and 97.1018 or paragraphs (c)(2)(ii) and (c)(5) of this section.

§ 97.1021 Recordation of CSAPR NO_X Ozone Season Group 3 allowance allocations and auction results.

(a) By July 29, 2021, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2021.

(b) By July 29, 2021, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2022, unless the State in which the source is located notifies the Administrator in writing by June 29, 2021 of the State's intent to submit to the Administrator a complete SIP revision by September 1, 2021 meeting the requirements of § 52.38(b)(10)(i) through (iv) of this chapter.

(1) If, by September 1, 2021 the State does not submit to the Administrator such complete SIP revision, the Administrator will record by September 15, 2021 in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2022.

(2) If the State submits to the Administrator by September 1, 2021 and the Administrator approves by March 1, 2022 such complete SIP revision, the Administrator will record by March 1, 2022 in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source as provided in such approved, complete SIP revision for the control period in 2022.

(3) If the State submits to the Administrator by September 1, 2021 and the Administrator does not approve by March 1, 2022 such complete SIP

revision, the Administrator will record by March 1, 2022 in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1011(a) for the control period in 2022.

(c) By July 1, 2022, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 3 allowances auctioned to CSAPR NO_X Ozone Season Group 3 units, in accordance with § 97.1011(a), or with a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, for the control periods in 2023 and 2024.

(d) By July 1, 2023, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 3 allowances auctioned to CSAPR NO_X Ozone Season Group 3 units, in accordance with § 97.1011(a), or with a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, for the control periods in 2025 and 2026.

(e) [Reserved]

(f) By July 1, 2024 and July 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 3 allowances auctioned to CSAPR NO_X Ozone Season Group 3 units, in accordance with § 97.1011(a), or with a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, for the control period in the third year after the year of the applicable recordation deadline under this paragraph.

(g) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source, or in each appropriate Allowance Management System account the CSAPR NO_X Ozone Season Group 3 allowances auctioned to CSAPR NO_X Ozone Season Group 3 units, in accordance with § 97.1012(a), or with a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(h) By May 1, 2022 and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_X Ozone Season Group 3 source's compliance account the CSAPR NO_X Ozone Season Group 3 allowances allocated to the CSAPR NO_X Ozone Season Group 3 units at the source in accordance with § 97.1012(b) for the control period in the year before the year of the applicable recordation deadline under this paragraph.

(i) [Reserved]

(j) [Reserved]

(k) By the date 15 days after the date on which any allocation or auction results, other than an allocation or auction results described in paragraphs (a) through (h) of this section, of CSAPR NO_X Ozone Season Group 3 allowances to a recipient is made by or are submitted to the Administrator in accordance with § 97.1011 or § 97.1012 or with a SIP revision approved under § 52.38(b)(11) or (12) of this chapter, the Administrator will record such allocation or auction results in the appropriate Allowance Management System account.

(l) When recording the allocation or auction of CSAPR NO_X Ozone Season Group 3 allowances to a CSAPR NO_X Ozone Season Group 3 unit or other entity in an Allowance Management System account, the Administrator will assign each CSAPR NO_X Ozone Season Group 3 allowance a unique identification number that will include digits identifying the year of the control period for which the CSAPR NO_X Ozone Season Group 3 allowance is allocated or auctioned.

(m) Notwithstanding any other provision of this subpart, if, as of the otherwise applicable deadline for recording any CSAPR NO_X Ozone Season Group 3 allowances in any CSAPR NO_X Ozone Season Group 3 source's compliance account under any other provision of this section, the Administrator has not completed all deductions of CSAPR NO_X Ozone Season Group 2 allowances required for the source under § 97.811(d), such otherwise applicable deadline shall not apply, and the Administrator instead will record such CSAPR NO_X Ozone Season Group 3 allowances in the source's compliance account as expeditiously as practicable after the Administrator has completed all deductions of CSAPR NO_X Ozone Season Group 2 allowances required for the source under § 97.811(d).

§ 97.1022 Submission of CSAPR NO_X Ozone Season Group 3 allowance transfers.

(a) An authorized account representative seeking recordation of a CSAPR NO_X Ozone Season Group 3 allowance transfer shall submit the transfer to the Administrator.

(b) A CSAPR NO_X Ozone Season Group 3 allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each CSAPR NO_X Ozone Season Group 3 allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each CSAPR NO_X Ozone Season Group 3 allowance identified by serial number in the transfer.

§ 97.1023 Recordation of CSAPR NO_X Ozone Season Group 3 allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CSAPR NO_X Ozone Season Group 3 allowance transfer that is correctly submitted under § 97.1022, the Administrator will record a CSAPR NO_X Ozone Season Group 3 allowance transfer by moving each CSAPR NO_X Ozone Season Group 3 allowance from the transferor account to the transferee account as specified in the transfer.

(b) A CSAPR NO_X Ozone Season Group 3 allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CSAPR NO_X Ozone Season Group 3 allowances allocated or auctioned for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.1024 for the control period immediately before such allowance transfer deadline.

(c) Where a CSAPR NO_X Ozone Season Group 3 allowance transfer is not correctly submitted under § 97.1022, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a CSAPR NO_X Ozone

Season Group 3 allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a CSAPR NO_X Ozone Season Group 3 allowance transfer that is not correctly submitted under § 97.1022, the Administrator will notify the authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer; and

(2) The reasons for such non-recordation.

§ 97.1024 Compliance with CSAPR NO_X Ozone Season Group 3 emissions limitation.

(a) *Availability for deduction for compliance.* CSAPR NO_X Ozone Season Group 3 allowances are available to be deducted for compliance with a source's CSAPR NO_X Ozone Season Group 3 emissions limitation for a control period in a given year only if the CSAPR NO_X Ozone Season Group 3 allowances:

(1) Were allocated or auctioned for such control period or a control period in a prior year; and

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with § 97.1023, of CSAPR NO_X Ozone Season Group 3 allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account CSAPR NO_X Ozone Season Group 3 allowances available under paragraph (a) of this section in order to determine whether the source meets the CSAPR NO_X Ozone Season Group 3 emissions limitation for such control period, as follows:

(1) Until the amount of CSAPR NO_X Ozone Season Group 3 allowances deducted equals the number of tons of total NO_X emissions from all CSAPR NO_X Ozone Season Group 3 units at the source for such control period; or

(2) If there are insufficient CSAPR NO_X Ozone Season Group 3 allowances to complete the deductions in paragraph (b)(1) of this section, until no more CSAPR NO_X Ozone Season Group 3 allowances available under paragraph (a) of this section remain in the compliance account.

(c) *Selection of CSAPR NO_X Ozone Season Group 3 allowances for deduction*—(1) *Identification by serial number.* The designated representative for a source may request that specific CSAPR NO_X Ozone Season Group 3 allowances, identified by serial number, in the source's compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the CSAPR NO_X Ozone Season Group 3 source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CSAPR NO_X Ozone Season Group 3 allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of CSAPR NO_X Ozone Season Group 3 allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any CSAPR NO_X Ozone Season Group 3 allowances that were recorded in the compliance account pursuant to § 97.1021 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR NO_X Ozone Season Group 3 allowances that were transferred to and recorded in the compliance account pursuant to this subpart or that were recorded in the compliance account pursuant to § 97.526(d) or § 97.826(d), in the order of recordation.

(d) *Deductions for excess emissions.* After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the CSAPR NO_X Ozone Season Group 3 source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CSAPR NO_X Ozone Season Group 3 allowances, allocated or auctioned for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two times the number of tons of the source's excess emissions.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section.

§ 97.1025 Compliance with CSAPR NO_X Ozone Season Group 3 assurance provisions.

(a) *Availability for deduction.* CSAPR NO_X Ozone Season Group 3 allowances are available to be deducted for compliance with the CSAPR NO_X Ozone Season Group 3 assurance provisions for a control period in a given year by the owners and operators of a group of one or more base CSAPR NO_X Ozone Season Group 3 sources and units in a State (and Indian country within the borders of such State) only if the CSAPR NO_X Ozone Season Group 3 allowances:

(1) Were allocated or auctioned for a control period in a prior year or the control period in the given year or in the immediately following year; and

(2) Are held in the assurance account, established by the Administrator for such owners and operators of such group of base CSAPR NO_X Ozone Season Group 3 sources and units in such State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, as of the deadline established in paragraph (b)(4) of this section.

(b) *Deductions for compliance.* The Administrator will deduct CSAPR NO_X Ozone Season Group 3 allowances available under paragraph (a) of this section for compliance with the CSAPR NO_X Ozone Season Group 3 assurance provisions for a State for a control period in a given year in accordance with the following procedures:

(1) By August 1, 2022 and August 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total NO_X emissions from all base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X Ozone Season Group 3 sources in the State (and Indian country within the borders of such State) during the control period in the year before the year of this calculation deadline and the amount, if any, by which such total NO_X emissions exceed the State assurance level as described in § 97.1006(c)(2)(iii); and

(ii) For the set of any States (and Indian country within the borders of such States) for which the results of the calculations required in paragraph (b)(1)(i) of this section indicate that total NO_X emissions exceed the respective State assurance levels for such control period—

(A) Calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more base CSAPR NO_X Ozone Season Group 3 sources and units in such State (and such Indian country), the common designated representative's share of the total NO_X emissions from all base CSAPR NO_X Ozone Season Group 3 units at base CSAPR NO_X

Ozone Season Group 3 sources in such State (and such Indian country), the common designated representative's assurance level, and the amount (if any) of CSAPR NO_X Ozone Season Group 3 allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.1006(c)(2)(i); and

(B) Promulgate a notice of data availability of the results of the calculations required in paragraphs (b)(1)(i) and (b)(1)(ii)(A) of this section, including separate calculations of the NO_X emissions from each base CSAPR NO_X Ozone Season Group 3 source in each such State (and Indian country within the borders of such State).

(2) The Administrator will provide an opportunity for submission of objections to the calculations referenced by each notice of data availability required in paragraph (b)(1)(ii) of this section.

(i) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in such notice are in accordance with § 97.1006(c)(2)(iii), §§ 97.1006(b) and 97.1030 through 97.1035, the definitions of ''common designated representative'', ''common designated representative's assurance level'', and ''common designated representative's share'' in § 97.1002, and the calculation formula in § 97.1006(c)(2)(i).

(ii) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(i) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(i) of this section.

(3) For any State (and Indian country within the borders of such State) referenced in each notice of data availability required in paragraph (b)(2)(ii) of this section as having base CSAPR NO_X Ozone Season Group 3 units with total NO_X emissions exceeding the State assurance level for a control period in a given year, the Administrator will establish one assurance account for each set of owners and operators referenced, in the notice of data availability required under paragraph (b)(2)(ii) of this section, as all of the owners and operators of a group of base CSAPR NO_X Ozone Season Group 3 sources and units in the State (and Indian country within the borders of such State) having a common designated representative for such control period and as being required to hold CSAPR NO_X Ozone Season Group 3 allowances.

(4)(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(ii) of this section, the owners and operators described in paragraph (b)(3) of this section shall hold in the assurance account established for them and for the appropriate base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section a total amount of CSAPR NO_X Ozone Season Group 3 allowances, available for deduction under paragraph (a) of this section, equal to the amount such owners and operators are required to hold with regard to such sources, units and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in such notice.

(ii) Notwithstanding the allowance-holding deadline specified in paragraph (b)(4)(i) of this section, if November 1 is not a business day, then such allowance-holding deadline shall be midnight of the first business day thereafter.

(5) After November 1 (or the date described in paragraph (b)(4)(ii) of this section) immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(ii) of this section and after the recordation, in accordance with § 97.1023, of CSAPR NO_X Ozone Season Group 3 allowance transfers submitted by midnight of such date, the Administrator will determine whether the owners and operators described in paragraph (b)(3) of this section hold, in the assurance account for the appropriate base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) established under paragraph (b)(3) of this section, the amount of CSAPR NO_X Ozone Season Group 3 allowances available under paragraph (a) of this section that the owners and operators are required to hold with regard to such sources, units, and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in the notice required in paragraph (b)(2)(ii) of this section.

(6) Notwithstanding any other provision of this subpart and any revision, made by or submitted to the Administrator after the promulgation of the notice of data availability required in paragraph (b)(2)(ii) of this section for a control period in a given year, of any data used in making the calculations referenced in such notice, the amounts of CSAPR NO_X Ozone Season Group 3 allowances that the owners and operators are required to hold in accordance with § 97.1006(c)(2)(i) for such control period shall continue to be such amounts as calculated by the Administrator and referenced in such notice required in paragraph (b)(2)(ii) of this section, except as follows:

(i) If any such data are revised by the Administrator as a result of a decision in or settlement of litigation concerning such data on appeal under part 78 of this chapter of such notice, or on appeal under section 307 of the Clean Air Act of a decision rendered under part 78 of this chapter on appeal of such notice, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR NO_X Ozone Season Group 3 allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.1006(c)(2)(i) for such control period with regard to the base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) involved, provided that such litigation under part 78 of this chapter, or the proceeding under part 78 of this chapter that resulted in the decision appealed in such litigation under section 307 of the Clean Air Act, was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(ii) of this section.

(ii) [Reserved]

(iii) If the revised data are used to recalculate, in accordance with paragraph (b)(6)(i) of this section, the amount of CSAPR NO_X Ozone Season Group 3 allowances that the owners and operators are required to hold for such control period with regard to the base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR NO_X Ozone Season Group 3 allowances that the owners and operators are required to hold increases as a result of the use of all such revised data, the Administrator will establish a new, reasonable deadline on which the owners and operators shall hold the additional amount of CSAPR NO_X Ozone Season Group 3 allowances in the assurance account established by the

Administrator for the appropriate base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section. The owners' and operators' failure to hold such additional amount, as required, before the new deadline shall not be a violation of the Clean Air Act. The owners' and operators' failure to hold such additional amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each CSAPR NO_X Ozone Season Group 3 allowance that the owners and operators fail to hold as required as of the new deadline, and each day in such control period, shall be a separate violation of the Clean Air Act.

(B) For the owners and operators for which the amount of CSAPR NO_X Ozone Season Group 3 allowances required to be held decreases as a result of the use of all such revised data, the Administrator will record, in all accounts from which CSAPR NO_X Ozone Season Group 3 allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate base CSAPR NO_X Ozone Season Group 3 sources, base CSAPR NO_X Ozone Season Group 3 units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, a total amount of the CSAPR NO_X Ozone Season Group 3 allowances held in such assurance account equal to the amount of the decrease. If CSAPR NO_X Ozone Season Group 3 allowances were transferred to such assurance account from more than one account, the amount of CSAPR NO_X Ozone Season Group 3 allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR NO_X Ozone Season Group 3 allowances transferred to such assurance account for such control period from such transferor account.

(C) Each CSAPR NO_X Ozone Season Group 3 allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the CSAPR NO_X Ozone Season Group 3 assurance provisions for such control period must be a CSAPR NO_X Ozone Season Group 3 allowance allocated for a control period in a year before or the year immediately following, or in the same year as, the year of such control period.

§ 97.1026 Banking.

(a) A CSAPR NO_X Ozone Season Group 3 allowance may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CSAPR NO_X Ozone Season Group 3 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR NO_X Ozone Season Group 3 allowance is deducted or transferred under § 97.1011(c), § 97.1023, § 97.1024, § 97.1025, § 97.1027, or § 97.1028 or paragraph (c) of this section.

(c) At any time after the allowance transfer deadline for the last control period for which a State NO_X Ozone Season Group 3 trading budget is set forth in § 97.1010(a) for a given State, the Administrator may record a transfer of any CSAPR NO_X Ozone Season Group 3 allowances held in the compliance account for a source in such State (or Indian country within the borders of such State) to a general account identified or established by the Administrator with the source's designated representative as the authorized account representative and with the owners and operators of the source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative. The Administrator will notify the designated representative not less than 15 days before making such a transfer.

§ 97.1027 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Allowance Management System account. Within 10 business days of making such correction, the Administrator will notify the authorized account representative for the account.

§ 97.1028 Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the CSAPR NO_X Ozone Season Group 3 Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct CSAPR NO_X Ozone Season Group 3 allowances from or transfer CSAPR NO_X Ozone Season Group 3 allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

§ 97.1029 [Reserved]

§ 97.1030 General monitoring, recordkeeping, and reporting requirements.

The owners and operators, and to the extent applicable, the designated representative, of a CSAPR NO_X Ozone Season Group 3 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subpart H of part 75 of this chapter. For purposes of applying such requirements, the definitions in § 97.1002 and in § 72.2 of this chapter shall apply, the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''CSAPR NO_X Ozone Season Group 3 unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively as defined in § 97.1002, and the term ''newly affected unit'' shall be deemed to mean ''newly affected CSAPR NO_X Ozone Season Group 3 unit''. The owner or operator of a unit that is not a CSAPR NO_X Ozone Season Group 3 unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CSAPR NO_X Ozone Season Group 3 unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CSAPR NO_X Ozone Season Group 3 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_X mass emissions and individual unit heat input (including all systems required to monitor NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.1031 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the latest of the following dates and shall record, report, and quality-assure the data from the

monitoring systems under paragraph (a)(1) of this section on and after the latest of the following dates:

(1) May 1, 2021;

(2) 180 calendar days after the date on which the unit commences commercial operation; or

(3) Where data for the unit are reported on a control period basis under § 97.1034(d)(1)(ii)(B), and where the compliance date under paragraph (b)(2) of this section is not in a month from May through September, May 1 immediately after the compliance date under paragraph (b)(2) of this section.

(4) The owner or operator of a CSAPR NO_X Ozone Season Group 3 unit for which construction of a new stack or flue or installation of add-on NO_X emission controls is completed after the applicable deadline under paragraph (b)(1), (2), or (3) of this section shall meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.1030 through § 97.1035, rather than the monitoring systems required under part 75 of this chapter;

(ii) NO_X emission rate, NO_X concentration, stack gas moisture content, stack gas volumetric flow rate, and O_2 or CO_2 concentration data shall be determined and reported, rather than the data listed in § 75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.1035, rather than § 75.66 of this chapter.

(c) *Reporting data.* The owner or operator of a CSAPR NO_X Ozone Season Group 3 unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_X concentration, NO_X emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_X mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.1035.

(2) No owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall operate the unit so as to discharge, or allow to be discharged, NO_X to the atmosphere without accounting for all such NO_X in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.1005 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.1031(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CSAPR NO_X Ozone Season Group 3 unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

§ 97.1031 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.1030(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendices B, D, and E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.1030(a)(1) that is exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_X emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the designated representative shall resubmit the petition to the Administrator under § 97.1035 to determine whether the approval applies under the CSAPR NO_X Ozone Season Group 3 Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.,* a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.1030(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.1030(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.1030(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.1030(a)(1) that may significantly affect the ability of the system to accurately measure or

record NO_X mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted NO_X monitoring system under appendix E to part 75 of this chapter, under § 97.1030(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under § 97.1030(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and the procedures in § 75.20(b)(5) and (g)(7) of this chapter (in lieu of the procedures in paragraph (d)(3)(v) of this section) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words ''certification'' and ''initial certification'' are replaced by the word ''recertification'' and the word ''certified'' is replaced by the word ''recertified''.

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.1033.

(ii) *Certification application.* The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CSAPR NO_X Ozone Season Group 3 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CSAPR NO_X Ozone Season Group 3 Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.1032(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(*1*) For a disapproved NO_X emission rate (*i.e.,* NO_X-diluent) system, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(*2*) For a disapproved NO_X pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_X and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(*3*) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(*4*) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(*5*) For a disapproved excepted NO_X monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(B) The designated representative shall submit a notification of certification retest dates and a new

certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) The designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 97.1032 Monitoring system out-of-control periods.

(a) *General provisions.* Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.1031 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.1031 for each disapproved monitoring system.

§ 97.1033 Notifications concerning monitoring.

The designated representative of a CSAPR NO_X Ozone Season Group 3 unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.1034 Recordkeeping and reporting.

(a) *General provisions.* The designated representative shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.1014(a).

(b) *Monitoring plans.* The owner or operator of a CSAPR NO_X Ozone Season Group 3 unit shall comply with the requirements of § 75.73(c) and (e) of this chapter.

(c) *Certification applications.* The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.1031, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The designated representative shall submit quarterly reports, as follows:

(1)(i) If a CSAPR NO_X Ozone Season Group 3 unit is subject to the Acid Rain Program or the CSAPR NO_X Annual Trading Program or if the owner or operator of such unit chooses to report on an annual basis under this subpart, then the designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_X mass emissions) for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit for the entire year.

(ii) If a CSAPR NO_X Ozone Season Group 3 unit is not subject to the Acid Rain Program or the CSAPR NO_X Annual Trading Program, then the designated representative shall either:

(A) Meet the requirements of subpart H of part 75 of this chapter for such unit for the entire year and report the NO_X mass emissions data and heat input data for such unit for the entire year in accordance with paragraph (d)(1)(i) of this section; or

(B) Meet the requirements of subpart H of part 75 of this chapter (including the requirements in § 75.74(c) of this chapter) for such unit for the control period and report the NO_X mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year.

(2) The designated representative shall report the NO_X mass emissions data and heat input data for a CSAPR NO_X Ozone Season Group 3 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter indicated under paragraph (d)(1) of this section beginning by the latest of:

(i) The calendar quarter covering May 1, 2021 through June 30, 2021;

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.1030(b); or

(iii) For a unit that reports on a control period basis under paragraph (d)(1)(ii)(B) of this section, if the calendar quarter under paragraph (d)(2)(ii) of this section does not include a month from May through September, the calendar quarter covering May 1 through June 30 immediately after the calendar quarter under paragraph (d)(2)(ii) of this section.

(3) The designated representative shall submit each quarterly report to the Administrator within 30 days after the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(4) For CSAPR NO_X Ozone Season Group 3 units that are also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, or CSAPR SO_2 Group 1 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the NO_X mass emission data, heat input data, and other information required by this subpart.

(5) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75 of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(3) of this section.

(e) *Compliance certification.* The designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications;

(2) For a unit with add-on NO_X emission controls and for all hours where NO_X data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_X emissions; and

(3) For a unit that is reporting on a control period basis under paragraph (d)(1)(ii)(B) of this section, the NO_X emission rate and NO_X concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO_X emissions.

§ 97.1035 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a CSAPR NO_X Ozone Season Group 3 unit may submit a petition under § 75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.1030 through 97.1034.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.

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